

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF WISCONSIN

3 JOSHUA J. BELOW, by his Guardian,
4 DEBRA BELOW, CHARLIE ELIZABETH
5 BELOW and PATRICK JOSHUA BELOW, et al,

6 Plaintiffs,

7 and

8 DEAN HEALTH PLAN, INC.,

9 Involuntary Plaintiff,

10 and

11 STAR BLUE BELOW-KOPF, by her Guardian
12 ad Litem, Teresa K. Kobelt,

13 Intervening Plaintiff,

14 vs.

15 C.A. NO. 3:15-CV-00529

16 YOKOHAMA TIRE CORPORATION, ABC
17 INSURANCE COMPANY, YOKOHAMA
18 CORPORATION OF AMERICA, DEF INSURANCE
19 COMPANY, YOKOHAMA CORPORATION OF
20 NORTH AMERICA, GHI INSURANCE COMPANY,
21 YOKOHAMA TIRE MANUFACTURING VIRGINIA,
22 LLC, JKL INSURANCE COMPANY, YOKOHAMA
23 RUBBER COMPANY, LTD, and MNO INSURANCE
24 COMPANY,

25 Defendants.

26 VIDEO DEPOSITION: DENNIS D. SKOGEN, MSME

27 DATE/TIME: October 13, 2016 - 9:05 a.m.

28 LOCATION: HABUSH, HABUSH & ROTTIER, S.C.
29 150 East Gilman Street, #2000
30 Madison, Wisconsin 53703

31 Job Number: 343546

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Page 2			Page 4		
1	A-P-P-E-A-R-A-N-C-E-S		1	P-R-O-C-E-E-D-I-N-G-S	
2	HABUSH, HABUSH & ROTTIER, S.C., by		2	THE VIDEOGRAPHER: This is the	
3	CHRISTOPHER ROGERS, ATTORNEY-AT-LAW		3	beginning of disk No. 1 in the deposition of	
4	150 East Gilman Street, Suite 2000		4	Dennis Skogen in the matter of Below, et al,	
5	Madison, Wisconsin 53703		5	versus Yokohama Tire Corporation, et al, held	
6	appeared on behalf of the Plaintiffs		6	at the offices of Habush, Habush & Rottier	
7	JOHNSON, TRENT, WEST & TAYLOR, LLP, by		7	located at 150 East Gilman Street in Madison,	
8	RAPHAEL TAYLOR, ATTORNEY-AT-LAW		8	Wisconsin. Today's date is Thursday, October	
9	919 Milam, Suite 1700		9	13th, 2016, at 9:05 a.m.	
10	Houston, Texas 77002		10	The court reporter is Doreen	
11	appeared on behalf of the Defendants		11	Brown-Schwager. I am Marco Santilli, the	
12	KASDORF, LEWIS & SWIETLIK, S.C., by		12	videographer, on behalf of Litigation	
13	JAMES J. KRIVA, ATTORNEY-AT-LAW		13	Services.	
14	11270 West Park Place, 5th Floor		14	This deposition is being videotaped at	
15	Milwaukee, Wisconsin 53224		15	all times unless specified to go off the	
16	appeared on behalf of the Defendants		16	record -- off the video record.	
17	VIDEOGRAPHER: Marco Santilli		17	Would all present please identify	
18	* * * * *		18	themselves, beginning with the witness?	
19	TRANSCRIPT INDEX - DENNIS D. SKOGEN, MSME		19	THE WITNESS: My name is Dennis	
20	-----		20	Skogen.	
21	EXAMINATION BY PAGE NO.		21	MR. TAYLOR: My name is Rafe Taylor.	
22	Mr. Taylor 5		22	I'm here for the Yokohama entities.	
23	Mr. Rogers 152		23	MR. ROGERS: My name is Christopher	
24	Mr. Taylor 152		24	Rogers of the Habush firm. I'm here for Joshua	
25	-----		25	J. Below, by his guardian, Deb Below, Charlie	
19	EXHIBITS DESCRIPTION PAGE MARKED				
20	Exhibit 25 Notice of Deposition Duces	28			
	Tecum				
21	Exhibit 26 2/29/16 accident analysis	32			
22	report (SK00660-077)				
23	Exhibit 27 Skogen invoices to Rottier	34			
24	(SK0003-010)				
25	Exhibit 28 Skogen CV (SK0001-002)	40			
Page 3			Page 5		
1	Exhibit 29 Indexed deposition of Scott	41	1	Elizabeth and Patrick Joshua Below.	
2	Stoffel		2	MR. KRIVA: Jim Kriva of Kasdorf,	
3	Exhibit 30 Indexed deposition of Chad	42	3	Lewis & Swietlik, co-counsel for Yokohama Tire	
4	Thompson		4	Company, et al, Defendants.	
5	Exhibit 31 Rule 26 list	42	5	THE VIDEOGRAPHER: Will the court	
6	Exhibit 32 CD, inspection photos	44	6	reporter please swear in the witness?	
7	1-336 (SK0011)		7	WHEREUPON, DENNIS D. SKOGEN, being	
8	Exhibit 33 File, Google Street View	45	8	first duly sworn, was examined as follows:	
9	(SK0129-135)		9	E-X-A-M-I-N-A-T-I-O-N	
10	Exhibit 34 File, calculations	46	10	BY MR. TAYLOR:	
11	(SK0136-137)		11	Q. Would you state your full name for the record,	
12	Exhibit 35 File, inspection notes	47	12	please?	
13	(SK0138-149)		13	A. Yes. My name is Dennis Skogen.	
14	Exhibit 36 Skogen scale drawing	49	14	Q. Mr. Skogen, my name is Rafe Taylor, and I	
15	(SK0078)		15	represent the Yokohama entities that have been	
16	Exhibit 37 9/15/16 letter to Skogen	65	16	sued by Mr. Below and his family. Do you	
17	from Munson with Jessen		17	understand that?	
18	statement		18	A. I do.	
19	Exhibit 38 File, vehicle		19	Q. Have you agreed to serve as an expert witness	
20	specifications (SK0079-081)		20	on behalf of the Belows?	
21	-----		21	A. Yes, I have.	
22	REQUESTED DOCUMENTATION PAGE NO.		22	Q. I understand from looking at your curriculum	
23	None		23	vitae that you are familiar with the deposition	
24	NOTE: Original transcript provided to Mr. Taylor.		24	process?	
25	Original exhibits returned to Mr. Skogen,		25	A. Yes.	
	with copies provided as requested by the				
	reporter.				

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<p style="text-align: right;">Page 6</p> <p>1 Q. Do you need me to go through the ground rules</p> <p>2 with you?</p> <p>3 A. No.</p> <p>4 Q. Fair enough.</p> <p>5 Looking at your Rule 26 list, it</p> <p>6 appears that you do at least ten to 12</p> <p>7 depositions or trial appearances per year at</p> <p>8 least out of the last three or four years, is</p> <p>9 that correct?</p> <p>10 A. Yes.</p> <p>11 Q. Somewhere in your report, you indicated that</p> <p>12 you investigated at least 8,000 different</p> <p>13 accidents in your career, is that right?</p> <p>14 A. Yes.</p> <p>15 Q. And not all of those have been automobile</p> <p>16 accidents, is that correct?</p> <p>17 A. You are correct.</p> <p>18 Q. Can you give us an idea or a percentage of the</p> <p>19 work that you've done in your 46-year career</p> <p>20 that would include automobile accidents?</p> <p>21 A. When I originally started in 1970, most of the</p> <p>22 work I did involved automobile accidents. So</p> <p>23 that would be a high percentage. But then</p> <p>24 clients would ask me to analyze accidents</p> <p>25 involving farm machinery and other kinds of</p>	<p style="text-align: right;">Page 8</p> <p>1 power takeoffs work and how people became</p> <p>2 injured when they contacted the power</p> <p>3 takeoffs.</p> <p>4 I've had cases involving the</p> <p>5 performance of -- especially related to safety</p> <p>6 of various types of agricultural equipment,</p> <p>7 including skid-steer loaders, other pieces of</p> <p>8 equipment that would be used in the farmstead</p> <p>9 that wouldn't fall directly within those</p> <p>10 parameters.</p> <p>11 Q. In the last four years, how many times have you</p> <p>12 investigated a single-vehicle accident?</p> <p>13 A. I never kept track. I don't know. Last four</p> <p>14 years? Maybe five or six a year. I don't have</p> <p>15 a number that I can give you at all.</p> <p>16 Q. Interestingly you put your date of birth on</p> <p>17 your curriculum vitae. It's December 22nd,</p> <p>18 1945, correct?</p> <p>19 A. Yes. I did put it there.</p> <p>20 Q. And it is December 22nd, 1945?</p> <p>21 A. Yes.</p> <p>22 Q. And so you're 71?</p> <p>23 A. No. I'll be 71 December 22nd.</p> <p>24 Q. It's coming up?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 7</p> <p>1 equipment over the years.</p> <p>2 Currently I suppose it's not quite 50</p> <p>3 percent motor vehicle accidents, and the rest</p> <p>4 would be other types of accidents.</p> <p>5 Q. What are the other types of accidents?</p> <p>6 A. As a mechanical engineer, I've analyzed</p> <p>7 accidents involving machinery. That machinery</p> <p>8 would be industrial machinery and agricultural</p> <p>9 machinery and sometimes other types of</p> <p>10 accidents or incidents.</p> <p>11 And so if you want me to go through</p> <p>12 the categories or name the kinds of machinery</p> <p>13 in agriculture or industry that I've analyzed,</p> <p>14 I can certainly do so.</p> <p>15 Q. What would those be?</p> <p>16 A. Yes. If we start with agricultural accidents,</p> <p>17 and knowing that I was raised on a farm, I've</p> <p>18 had to -- I've been called upon to analyze</p> <p>19 accidents involving agricultural tractors,</p> <p>20 implements, including forage wagons, manure</p> <p>21 spreaders, farm elevators. Then farmstead</p> <p>22 equipment involving silo unloaders, silo</p> <p>23 fillers, barn cleaners.</p> <p>24 There have been a number of accidents</p> <p>25 involving power takeoff, questions about how</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. You're a licensed engineer in Wisconsin?</p> <p>2 A. Yes.</p> <p>3 Q. Any other states?</p> <p>4 A. I'm not currently in any other states licensed</p> <p>5 as a professional engineer.</p> <p>6 Q. Have you been before?</p> <p>7 A. Yes.</p> <p>8 Q. Where else?</p> <p>9 A. In Iowa and Alabama.</p> <p>10 Q. In Iowa, did you allow that license to lapse,</p> <p>11 or was it for some reason suspended or</p> <p>12 revoked?</p> <p>13 A. No. It wasn't suspended or revoked. I stopped</p> <p>14 paying the fees basically.</p> <p>15 Q. Fair enough.</p> <p>16 In Alabama, was that license suspended</p> <p>17 or revoked?</p> <p>18 A. No. It was not suspended or revoked.</p> <p>19 Q. Has your license in Wisconsin ever been</p> <p>20 suspended or revoked?</p> <p>21 A. No, sir.</p> <p>22 Q. You mentioned you hold a mechanical engineering</p> <p>23 degree?</p> <p>24 A. I do.</p> <p>25 Q. And that's a Bachelor of Science level degree,</p>

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<p style="text-align: right;">Page 10</p> <p>1 correct?</p> <p>2 A. And master's degree in both.</p> <p>3 Q. Right. You started your master's in 1970 and</p> <p>4 completed it in 1986?</p> <p>5 A. Correct.</p> <p>6 Q. Do you hold any other certificates or degrees?</p> <p>7 A. No.</p> <p>8 Q. You've been serving as an accident</p> <p>9 reconstructionist on some level, whether it be</p> <p>10 automobile, farm equipment or otherwise, for</p> <p>11 about 46 years, is that right?</p> <p>12 A. True.</p> <p>13 Q. By whom were you retained?</p> <p>14 A. In this matter, we were originally contacted by</p> <p>15 Mr. Rottier.</p> <p>16 Q. My understanding is the date of the accident</p> <p>17 involving Mr. Below was September the 14th,</p> <p>18 2013, is that right?</p> <p>19 A. Yes.</p> <p>20 Q. And you had your first contact with Dan Rottier</p> <p>21 on October the 13th, 2013, is that right?</p> <p>22 A. October the 30th, yes.</p> <p>23 Q. October 30th?</p> <p>24 A. Yes. Let me look at my new case outline which</p> <p>25 would be in the file, and it's previously been</p>	<p style="text-align: right;">Page 12</p> <p>1 stated.</p> <p>2 Q. Okay. Certainly you understood that at some</p> <p>3 point you would be reconstructing this accident</p> <p>4 when you were hired?</p> <p>5 A. Potentially, yes.</p> <p>6 So you understand, many times we're</p> <p>7 contacted to preserve evidence, to gather</p> <p>8 evidence, and then to hold the evidence in case</p> <p>9 there's something that -- a matter that</p> <p>10 proceeds. And then later we may be asked to</p> <p>11 reconstruct the accident.</p> <p>12 Q. When did your understanding go from an</p> <p>13 inference to a directive that you would be</p> <p>14 reconstructing the accident?</p> <p>15 A. I would say within a year or two after that</p> <p>16 time, after we were initially contacted.</p> <p>17 Q. You're thumbing through your file. Are you</p> <p>18 looking for a specific set of notes that would</p> <p>19 answer that question more directly?</p> <p>20 A. I'm still looking for the new case outline.</p> <p>21 Q. Do you want to take a second and see if you can</p> <p>22 can find it?</p> <p>23 A. Yes, sir.</p> <p>24 Q. See if it would help you with some of these</p> <p>25 questions?</p>
<p style="text-align: right;">Page 11</p> <p>1 marked with a Bates number.</p> <p>2 Q. Sure. I may have just written it down wrong.</p> <p>3 A. I know it's contained in the materials, so give</p> <p>4 me just a moment to find it.</p> <p>5 Q. Sure. I think it's in your report actually.</p> <p>6 A. Yes. I have that down as September 30th -- or</p> <p>7 pardon me. October 30th, 2013.</p> <p>8 Q. Well, let's go with that day for now.</p> <p>9 A. That's fine.</p> <p>10 Q. Roughly six weeks after the accident you were</p> <p>11 contacted by Mr. Rottier about this case?</p> <p>12 A. Yes, sir.</p> <p>13 Q. What were you told your role would be in this</p> <p>14 case?</p> <p>15 A. I'm not sure we were told a role per se. It</p> <p>16 was my understanding that we were to open a</p> <p>17 file, and as we do so many times to preserve</p> <p>18 evidence, in other words, to review information</p> <p>19 that was provided to us and that we gathered</p> <p>20 ourselves to be in a position so that we could</p> <p>21 subsequently reconstruct the accident, if</p> <p>22 needed.</p> <p>23 Q. So you were not initially hired to reconstruct</p> <p>24 the accident?</p> <p>25 A. Oh, that's inferred, but it wasn't so</p>	<p style="text-align: right;">Page 13</p> <p>1 A. Depends upon where it is in the stack, but it's</p> <p>2 a document that's filled out when we're first</p> <p>3 retained, and it gives the name of the</p> <p>4 contacting party, the names of the people</p> <p>5 involved, the date of the accident, and the</p> <p>6 name of the contacting party and when they</p> <p>7 contacted us.</p> <p>8 Q. I can tell you that I don't think I've actually</p> <p>9 seen that document.</p> <p>10 A. It's been previously numbered as 92, Bates 92,</p> <p>11 because I found it.</p> <p>12 Q. Fantastic.</p> <p>13 A. And we were contacted by Mr. Rottier on</p> <p>14 October 30th, 2013, and as I said, the date of</p> <p>15 the accident was given along with the name of</p> <p>16 the involved driver, Mr. Below.</p> <p>17 Q. May I see that document?</p> <p>18 A. You certainly may.</p> <p>19 Q. Thank you.</p> <p>20 Did you have the conversation with</p> <p>21 Mr. Rottier on December 30th, 2013?</p> <p>22 A. I may have. I don't recall doing so.</p> <p>23 Q. Can you tell from that document?</p> <p>24 A. I couldn't tell either way, because I don't</p> <p>25 make notes when we have it generated.</p>

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<p style="text-align: right;">Page 14</p> <p>1 Exhibit 92, when there's a call to our</p> <p>2 office, my assistant, Mary Stoflet, types up</p> <p>3 Exhibit 92.</p> <p>4 Q. Sure.</p> <p>5 A. So I -- Usually I talk to people at that time,</p> <p>6 but I may not have been available. I simply</p> <p>7 don't recall talking or not talking with</p> <p>8 Mr. Rottier at that time.</p> <p>9 Q. What would have that call spurred in your</p> <p>10 office? In other words, what chain of events</p> <p>11 would that have set in motion?</p> <p>12 A. What happens is we open a file, and we have the</p> <p>13 name of the driver, so if we're contacted by</p> <p>14 someone else we would have a conflict of</p> <p>15 interest. And then we wait for information</p> <p>16 from the client, such as receiving police</p> <p>17 reports and photographs and other information</p> <p>18 which is sent to us.</p> <p>19 Q. Do you have something in your file that</p> <p>20 indicates when the next point in time was that</p> <p>21 you received information from Mr. Rottier's</p> <p>22 office?</p> <p>23 A. I don't know if there's a sequential way to</p> <p>24 determine that, because sometimes materials are</p> <p>25 delivered to us in person. Sometimes, such as</p>	<p style="text-align: right;">Page 16</p> <p>1 Mr. Rottier, is that correct?</p> <p>2 A. Optimistically so. I try to, yes.</p> <p>3 Q. That's how you get paid, right?</p> <p>4 A. Well, the company gets paid by the hour, yes.</p> <p>5 Q. Sure. And can you tell by your billing</p> <p>6 records, was that August 5th, 2014 the next</p> <p>7 billing entry after the file was opened up?</p> <p>8 A. It appears to be so, yes.</p> <p>9 Q. You would certainly expect anyone in your</p> <p>10 office with the ability to capture time to do</p> <p>11 so when they receive something on a file,</p> <p>12 wouldn't you?</p> <p>13 A. Well again, optimistically so, but I know it</p> <p>14 doesn't always happen.</p> <p>15 Q. Believe me, you're preaching to the choir right</p> <p>16 now. I understand.</p> <p>17 Ultimately I'm assuming sometime then</p> <p>18 after August the 5th of 2014, you were</p> <p>19 instructed to do a reconstruction of this</p> <p>20 accident?</p> <p>21 A. To inspect and survey the accident, yes.</p> <p>22 Q. Uh-huh.</p> <p>23 A. And then that's implied as it would have been</p> <p>24 during the first contact that there may be a</p> <p>25 time for a reconstruction at a later date.</p>
<p style="text-align: right;">Page 15</p> <p>1 the August 5th, 2014 letter from Mr. Jarvis,</p> <p>2 which came by UPS, delivered the CD of</p> <p>3 photographs taken at the accident scene.</p> <p>4 That may be the next contact, but I can't be</p> <p>5 certain whether there was a phone call or</p> <p>6 some other information that was provided in</p> <p>7 person.</p> <p>8 And that's the best answer I can</p> <p>9 give.</p> <p>10 Q. During that phone call that -- Strike that.</p> <p>11 During that initial phone call from</p> <p>12 Mr. Rottier, would someone in your office have</p> <p>13 inquired as to the availability of the subject</p> <p>14 vehicle?</p> <p>15 A. Not necessarily, no.</p> <p>16 Q. Why not?</p> <p>17 A. Because we wait for information to come from</p> <p>18 the -- the client as to -- we usually like to</p> <p>19 have a police report so we can check the names,</p> <p>20 and then photographs of the scene. And then</p> <p>21 depending what the assignment is, we may</p> <p>22 inspect the vehicle and an inquiry would be</p> <p>23 made at that time.</p> <p>24 Q. And certainly you account for your time by</p> <p>25 billing your time to your clients such as</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. What did your group do to preserve the evidence</p> <p>2 between your initial contact on October 30th,</p> <p>3 2013 and your subsequent contact on August the</p> <p>4 5th of 2014 for Mr. Rottier's office?</p> <p>5 A. I don't recall us doing anything of that</p> <p>6 nature. We didn't survey the site or inspect</p> <p>7 anything prior to that site inspection.</p> <p>8 Q. And pardon me, but I thought what you told us</p> <p>9 was your role was -- after you opened the file,</p> <p>10 one of your roles was to preserve the</p> <p>11 evidence?</p> <p>12 A. Correct.</p> <p>13 Q. And so there was nothing -- no overt action</p> <p>14 taken by your group between October the 30th,</p> <p>15 2013 and August 5th, 2014 to preserve the</p> <p>16 evidence?</p> <p>17 A. I'm not sure I know what you mean by overt</p> <p>18 action. I can say that we didn't inspect the</p> <p>19 site until August of 2014.</p> <p>20 Q. Uh-huh.</p> <p>21 A. And I don't have a record of something else</p> <p>22 being done between the time of original contact</p> <p>23 and the survey of the site.</p> <p>24 Q. In order to reconstruct the -- the accident,</p> <p>25 you had analyzed information related to the</p>

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<p style="text-align: right;">Page 18</p> <p>1 vehicle involved, correct?</p> <p>2 A. Yes.</p> <p>3 Q. In order to reconstruct the accident, you had</p> <p>4 to analyze the information related to the</p> <p>5 trailer and its contents that were being pulled</p> <p>6 by the subject vehicle, correct?</p> <p>7 A. Yes.</p> <p>8 Q. In order to analyze the -- Strike that. In</p> <p>9 order to reconstruct the accident, you had to</p> <p>10 analyze the information related to the driver</p> <p>11 of the vehicle, right?</p> <p>12 A. Not so much the driver, no. I was analyzing</p> <p>13 what the vehicle did.</p> <p>14 Q. Okay. You didn't analyze what the driver</p> <p>15 did?</p> <p>16 A. Well, I certainly implied he was driving the</p> <p>17 vehicle. Of course.</p> <p>18 Q. Sure.</p> <p>19 A. And I understand he was in the vehicle and was</p> <p>20 injured as a result of the accident. But what</p> <p>21 the driver was actually doing in the accident,</p> <p>22 I haven't been asked to analyze that, if it can</p> <p>23 be analyzed.</p> <p>24 Q. Was part of your analysis in reconstructing the</p> <p>25 accident to look at the environment or the</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. How about any of the other tires that were on</p> <p>2 the vehicle; do you have any -- are you going</p> <p>3 to offer any opinions with regard to the design</p> <p>4 or manufacture of those tires?</p> <p>5 A. No.</p> <p>6 Q. Do you intend to offer any opinions with regard</p> <p>7 to the injury causation in this accident?</p> <p>8 A. Well, if asked. Mr. Below was injured in the</p> <p>9 accident, but the mechanisms of it, the details</p> <p>10 of it, I haven't been asked to analyze.</p> <p>11 Q. Okay.</p> <p>12 A. And don't anticipate giving an opinion</p> <p>13 accordingly.</p> <p>14 Q. Sometimes we call that the biomechanics of the</p> <p>15 accident. Have you been asked to analyze the</p> <p>16 biomechanics of this accident?</p> <p>17 A. I have not.</p> <p>18 Q. Do you intend to offer any opinions with regard</p> <p>19 to the biomechanics of this accident?</p> <p>20 A. I had no intention, but it depends on questions</p> <p>21 you might ask today. But I had no intention of</p> <p>22 doing so.</p> <p>23 Q. And that's fair. You understand we're in</p> <p>24 federal court, you've been in federal court a</p> <p>25 number of times, correct?</p>
<p style="text-align: right;">Page 19</p> <p>1 roadway where the accident occurred?</p> <p>2 A. Yes.</p> <p>3 Q. Going back to Mr. Below, he was the driver,</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. And let me see if I understand this. Have you</p> <p>7 done anything to analyze Mr. Below's actions</p> <p>8 from the points where you believe this accident</p> <p>9 sequence began up to the point that the vehicle</p> <p>10 rolled over?</p> <p>11 A. No. I've analyzed what the vehicle did, but</p> <p>12 not what he was doing, if anything.</p> <p>13 Q. Let's talk about some things you won't testify</p> <p>14 about. Narrow our field of vision here today.</p> <p>15 Do you consider yourself an expert in the</p> <p>16 design of steel-belted radial tires?</p> <p>17 A. No.</p> <p>18 Q. Do you consider yourself an expert in the</p> <p>19 manufacturing of steel-belted radial tires?</p> <p>20 A. No.</p> <p>21 Q. Do you intend to offer any opinions with regard</p> <p>22 to the manufacturing or design of the</p> <p>23 steel-belted radial tire on the right rear of</p> <p>24 the vehicle involved in this accident?</p> <p>25 A. I do not.</p>	<p style="text-align: right;">Page 21</p> <p>1 A. I have.</p> <p>2 Q. And you've issued a report in this case that</p> <p>3 outlines your opinions and the basis of those</p> <p>4 opinions, correct?</p> <p>5 A. I did write a report, yes.</p> <p>6 Q. And that was in compliance with the federal</p> <p>7 rules, correct?</p> <p>8 A. Yes, sir.</p> <p>9 Q. So in that report, you don't talk about the</p> <p>10 biomechanics of the accident, correct?</p> <p>11 A. I did not.</p> <p>12 Q. Okay. Have you formed an opinion as to whether</p> <p>13 or not Mr. Below was belted or unbelted in the</p> <p>14 accident?</p> <p>15 A. I have not.</p> <p>16 Q. Do you intend to offer any opinions as to</p> <p>17 warnings?</p> <p>18 A. I don't anticipate offering opinions as to</p> <p>19 warnings.</p> <p>20 Again, there may be some question that</p> <p>21 you may ask today, but that was not part of my</p> <p>22 intended testimony or opinions given.</p> <p>23 Q. Certainly. And I didn't hire you, so I'm not</p> <p>24 going to expand your scope of -- of what I'm</p> <p>25 asking you to be an expert witness on.</p>

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<p style="text-align: right;">Page 22</p> <p>1 Certainly there are no opinions in your report</p> <p>2 related to warnings, are there, sir?</p> <p>3 A. You are correct.</p> <p>4 Q. Thank you.</p> <p>5 Do you have any opinions with regard</p> <p>6 to whether there was any sort of design defect</p> <p>7 of the vehicle involved in this case?</p> <p>8 A. No. I do not have such opinions.</p> <p>9 Q. Have you ever offered an opinion that a</p> <p>10 passenger vehicle was defectively designed?</p> <p>11 A. Yes.</p> <p>12 Q. Which ones?</p> <p>13 A. Oh, my. There have been a number over the</p> <p>14 years. There was some involving way back when,</p> <p>15 armrests had the door release at the front of</p> <p>16 the armrest, and in the accident people would</p> <p>17 involuntarily lift their arms and open the door</p> <p>18 and be ejected.</p> <p>19 I go back to the Corvair days in my</p> <p>20 analyses, although we were working for</p> <p>21 General Motors, and I didn't consider it</p> <p>22 defective at that time, but there were motor</p> <p>23 mount cases where the motor mounts broke and</p> <p>24 the engine shifted and caused the accelerator</p> <p>25 to stick.</p>	<p style="text-align: right;">Page 24</p> <p>1 '70s.</p> <p>2 I had opinions about other types of</p> <p>3 cases too, seat back failures.</p> <p>4 Q. Uh-huh.</p> <p>5 A. Volkswagen Beetles had a seat that would --</p> <p>6 back that would fold rearward when the vehicle</p> <p>7 was rear-ended, and people's heads would go out</p> <p>8 the back window or their bodies would go out</p> <p>9 the back window.</p> <p>10 So I was involved in a number of those</p> <p>11 cases analyzing the defects in design of the</p> <p>12 seat backs.</p> <p>13 Q. What type of vehicles had the seat belt problem</p> <p>14 where they would cut during an accident?</p> <p>15 A. It was a foreign vehicle. I can't recall</p> <p>16 whether it was a Fiat or something of that</p> <p>17 nature. I only recall one. But that was a</p> <p>18 defect in design in placement of a seat belt</p> <p>19 next to a sharp edge of the seat back.</p> <p>20 Q. And what vehicle had the motor mount issue with</p> <p>21 the -- Is that related to the stuck</p> <p>22 accelerators, or are those two separate</p> <p>23 items?</p> <p>24 A. Well, first of all, they were GM cases for the</p> <p>25 most part, and then the accelerator would</p>
<p style="text-align: right;">Page 23</p> <p>1 I've had a number of cases over the</p> <p>2 years where there have been stuck accelerators</p> <p>3 in various types of vehicles. There have</p> <p>4 been questions -- And those were design</p> <p>5 defects.</p> <p>6 There was a defect in design of</p> <p>7 placement of the seat belt such that it would</p> <p>8 be cut when there was an accident.</p> <p>9 I go back to the days of the Pinto</p> <p>10 fire cases and the Ford products that had the</p> <p>11 top of the fuel tank to be the bottom of the</p> <p>12 trunk. I had those.</p> <p>13 I'm sure there are a number of others</p> <p>14 that I've had over the years.</p> <p>15 Q. Sure.</p> <p>16 A. But those are some examples that come to</p> <p>17 mind.</p> <p>18 Q. Okay. So you mentioned the Ford Pinto?</p> <p>19 A. Yes.</p> <p>20 Q. And was it the Chevrolet Corvair?</p> <p>21 A. Yes.</p> <p>22 Q. What vehicle contained the armrest where you</p> <p>23 offered a defective --</p> <p>24 A. That was a common design. It was GM and Ford.</p> <p>25 It was in -- Those cars were in the '60s and</p>	<p style="text-align: right;">Page 25</p> <p>1 stick.</p> <p>2 But I've had other cases where there</p> <p>3 were stuck linkages. I remember one in the</p> <p>4 Upper Peninsula of Michigan, the vehicle had a</p> <p>5 cable accelerator, because it was cold up</p> <p>6 there, the cable was stiff, and when the driver</p> <p>7 stepped on the accelerator it stuck in the full</p> <p>8 acceleration position. And I remember it</p> <p>9 clearly because it went down and struck the</p> <p>10 Bunny -- the Bunny -- Bugs Bunny Bread Company</p> <p>11 or something of that nature. That's why it</p> <p>12 sticks in my mind.</p> <p>13 Q. I'm sure it wasn't funny for the person driving</p> <p>14 the vehicle, but it is funny. I can understand</p> <p>15 why that would stick in your mind.</p> <p>16 With regard to passenger vehicles,</p> <p>17 have you ever offered opinion that a passenger</p> <p>18 vehicle was defectively designed because of its</p> <p>19 handling or stability?</p> <p>20 A. Not that I recall, no.</p> <p>21 Q. Have you ever defended an automobile</p> <p>22 manufacturer against claims that its vehicle</p> <p>23 was defective by design due to handling or</p> <p>24 stability?</p> <p>25 A. No.</p>

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<p style="text-align: right;">Page 26</p> <p>1 Q. Have you ever offered an opinion that a piece 2 of farm machinery was defectively designed? 3 A. Yes. 4 Q. Have you ever offered an opinion that a piece 5 of farm machinery was defectively designed 6 because of its handling or stability 7 properties? 8 A. No. 9 Q. On the farm machinery, what types of defects 10 have you opined occurred in certain farm 11 machinery? 12 A. You mean defects generally, or defects in 13 design? 14 Defects generally would include brakes 15 that failed, steering that failed. 16 Q. Sure. 17 A. Parts that broke, accelerator that stuck. Some 18 cases of fires, although I try not to do many 19 of those, there were some fire causes. 20 Q. Those would be more manufacturing type defects 21 you think, or -- 22 A. Or lack of maintenance. 23 Q. Okay. 24 A. And then design issues would be some other 25 kinds of defects, of course.</p>	<p style="text-align: right;">Page 28</p> <p>1 types, augers in silo unloading equipment. 2 There have been questions of guarding of return 3 corners and on barn cleaners. 4 And I know there have been numerous 5 others, but those would give you some flavor. 6 (Exhibit 25 marked for identification.) 7 Q. I'm going to hand you what I've marked as 8 Exhibit 25 to your deposition, sir. I 9 understand from counsel presently that we're 10 going sequentially, so we're starting with 11 Exhibit 25. This is a notice to take your 12 deposition today with a subpoena duces tecum 13 attached? 14 A. Yes. 15 Q. Have you seen this document before? 16 A. Yes. 17 Q. Have you attempted to comply with the subpoena 18 duces tecum? 19 A. Yes. 20 Q. Have you brought with you each and every item 21 that was part of your file? 22 A. Yes. 23 Q. And one of the things I didn't see in your file 24 was any depositions. Have you reviewed any 25 depositions in this case?</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. Gotcha. 2 So let me see if I understand your 3 first answer. With regard to farm machinery, 4 have you found in the past that there was a 5 defect in the product that was caused from a 6 lack of maintenance? 7 A. That would be one way, yes. 8 Q. And who was responsible for that lack of 9 maintenance in that particular situation? 10 A. At times it was the farmer himself. At times 11 it was the mechanic that did work for the 12 farmer. At times it was the dealer who 13 repaired or made repairs or allegedly made 14 repairs. 15 Q. And then you've also found design defects in 16 farm machinery? 17 A. I have. 18 Q. Don't have to go into great detail, but what 19 type of farm machinery have you found that had 20 design defects? 21 A. Over the years, there were guarding issues on 22 manure spreaders, guarding of the drive shaft 23 on the side of a manure spreader. There have 24 been issues of guardings of PTO. There have 25 been issues of guarding of augers of various</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Yes. 2 Q. How have you reviewed those? 3 A. By reading them. I have them in my file. But 4 they came after my report was written. 5 Q. Fair enough. 6 And you handed me your file before we 7 got on the record, and I was able to thumb 8 through it. Would you mind going through and 9 pulling out the depositions that you reviewed 10 for me? 11 A. Correct. I shall do so. 12 Q. Thank you, sir. 13 A. I have the transcript of -- and exhibits of the 14 deposition of Trooper Chad Thompson, which was 15 taken on September 8th, 2016. I have the 16 transcript of the deposition of Scott Stoffel. 17 That was -- S-t-o-f-f-e-l. That was taken on 18 May 25th. 19 Q. Who's Mr. Stoffel? 20 A. Mr. Stoffel was a passenger in Mr. Below's 21 vehicle at the time of the accident. 22 Q. Okay. 23 A. And those would be the depositions I have. But 24 I also have received a statement, this is by a 25 witness, his name was Chris Jensen -- or</p>

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<p style="text-align: right;">Page 30</p> <p>1 Jessen, J-e-s-s-e-n, and that was taken on</p> <p>2 February 22nd, 2016.</p> <p>3 Now, I know that's not a transcript,</p> <p>4 but it's a document that I had.</p> <p>5 Q. May I see that? Sure.</p> <p>6 Any other depositions or transcripts</p> <p>7 that you reviewed?</p> <p>8 A. No.</p> <p>9 Q. You have not reviewed Mr. Below's deposition</p> <p>10 transcript?</p> <p>11 A. I have not.</p> <p>12 Q. Do you know why not?</p> <p>13 A. It was never sent to me. I understand</p> <p>14 Mr. Below doesn't have any recollection of the</p> <p>15 accident. I did ask one time about how</p> <p>16 Mr. Below was doing and if he remembered</p> <p>17 anything about the accident. It's my</p> <p>18 understanding, I could be incorrect, it was my</p> <p>19 understanding Mr. Below was injured to the</p> <p>20 degree he didn't remember anything about the</p> <p>21 accident.</p> <p>22 Q. That's what you've been told by counsel?</p> <p>23 A. Yes.</p> <p>24 Q. Are you aware of whether Mr. Below had any</p> <p>25 recollection of the care and maintenance of the</p>	<p style="text-align: right;">Page 32</p> <p>1 are in the same order they were originally.</p> <p>2 Q. Fair enough.</p> <p>3 A. So good luck with that.</p> <p>4 Q. You've brought a copy of your report in this</p> <p>5 case?</p> <p>6 A. Yes.</p> <p>7 Q. And attached to your report is also a</p> <p>8 curriculum vitae and what was a current Rule 26</p> <p>9 list at the time you issued your report?</p> <p>10 A. Yes.</p> <p>11 Q. I'll mark that as Exhibit 26 to your</p> <p>12 deposition.</p> <p>13 (Exhibit 26 marked for</p> <p>14 identification.)</p> <p>15 Q. And for ease sake, it's Bates numbered SK066</p> <p>16 through 77. All right?</p> <p>17 A. Yes, sir.</p> <p>18 Q. There's a number of documents clipped together</p> <p>19 here that are Bates labeled SK0003 through</p> <p>20 SK000 -- or excuse me, 010. Would you take a</p> <p>21 look at those?</p> <p>22 A. Yes.</p> <p>23 Q. What are those?</p> <p>24 A. Those are our invoices to Mr. Rottier</p> <p>25 concerning our work done on this file.</p>
<p style="text-align: right;">Page 31</p> <p>1 vehicle involved in the accident?</p> <p>2 A. No.</p> <p>3 Q. Are you aware of whether or not Mr. Below had</p> <p>4 any information in the deposition with regard</p> <p>5 to the loading on the vehicle --</p> <p>6 A. No.</p> <p>7 Q. -- on the day of the accident?</p> <p>8 A. I'm sorry. No.</p> <p>9 Q. Did your review of the trooper's deposition,</p> <p>10 the passenger's deposition, and the statement</p> <p>11 by an eye witness in any way change or alter</p> <p>12 your opinions that you intend to offer in this</p> <p>13 case?</p> <p>14 A. No.</p> <p>15 Q. May I see your file for just a second?</p> <p>16 A. Of course. Which part, the part with all the</p> <p>17 numbers?</p> <p>18 Q. Yeah.</p> <p>19 A. Or the part that --</p> <p>20 Q. Give me the part with the numbers, please.</p> <p>21 A. Yes, sir.</p> <p>22 Q. We'll just do some marking here and get some</p> <p>23 house cleaning out of the way. How about</p> <p>24 that?</p> <p>25 A. That's fine. I don't know if all the numbers</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. Is that the entirety of your invoices that have</p> <p>2 been issued to Mr. Rottier related to this case</p> <p>3 thus far?</p> <p>4 A. Yes.</p> <p>5 Q. Has additional work been done since then?</p> <p>6 A. Yes.</p> <p>7 Q. What has that work included since then?</p> <p>8 A. I've read the transcripts of the deposition and</p> <p>9 the statement, and I reviewed the file</p> <p>10 yesterday in anticipation of this deposition.</p> <p>11 Q. What's the date of the last invoice in that</p> <p>12 stack?</p> <p>13 A. February 29th, 2016.</p> <p>14 Q. You don't have a March 1st, 2016, Bates SK0010,</p> <p>15 the last one in the stack?</p> <p>16 A. I do. Oh. The -- You asked me the date of the</p> <p>17 last activity, and that was February 29th,</p> <p>18 2016.</p> <p>19 Q. Sure.</p> <p>20 A. There's another page to it? I only have one</p> <p>21 page with my No. 10.</p> <p>22 Q. That's what I have also. That's the date of</p> <p>23 the invoice is March the 1st, right?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. Have you totaled the amount of those</p>

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<p style="text-align: right;">Page 34</p> <p>1 invoices?</p> <p>2 A. No.</p> <p>3 Q. Okay. Would it surprise you if it totaled</p> <p>4 \$22,333.40 between the invoice dated 9/24/15</p> <p>5 and 3/1 of '16?</p> <p>6 A. Not much surprises me, but I don't know if</p> <p>7 that's correct addition. Or sometimes we have</p> <p>8 an amount due that sometimes gets added back</p> <p>9 in.</p> <p>10 Q. Sure.</p> <p>11 A. But I haven't added up the numbers to tell you</p> <p>12 if that's a correct statement or not.</p> <p>13 Q. Let's mark those as Exhibit 27.</p> <p>14 (Exhibit 27 marked for</p> <p>15 identification.)</p> <p>16 Q. How much do you charge per hour for your time,</p> <p>17 sir?</p> <p>18 A. Skogen Engineering Group would charge \$375 per</p> <p>19 hour for my time.</p> <p>20 Q. Okay.</p> <p>21 A. It was not that when we started on the file,</p> <p>22 however.</p> <p>23 Q. What was it when you started on the file?</p> <p>24 A. I would look at the invoice again, please, and</p> <p>25 I could tell you.</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Uh-huh.</p> <p>2 A. Zack Bingen. Zack is Z-a-c-k, Bingen,</p> <p>3 B-i-n-g-e-n.</p> <p>4 Q. Anybody else?</p> <p>5 A. Dave Zuelhke. Dave Zuelhke, Z-u-e-l-h-k-e.</p> <p>6 Q. Sure.</p> <p>7 A. Those would be the engineers.</p> <p>8 Q. What form of engineering degree does David</p> <p>9 Zuelhke have?</p> <p>10 A. He has a mechanical engineering degree and a</p> <p>11 master's degree in engineering.</p> <p>12 Q. What are David's rates?</p> <p>13 A. I don't remember what they were in 2013.</p> <p>14 Q. What are they today?</p> <p>15 A. Mr. Zuelhke is no longer with our firm. He's</p> <p>16 now a fireman in the city of Fitchburg.</p> <p>17 Q. Zackary Bingen?</p> <p>18 A. Bingen, yes.</p> <p>19 Q. What were his rates?</p> <p>20 A. Again, I don't know. They certainly didn't</p> <p>21 approach 375. Perhaps a hundred dollars an</p> <p>22 hour or something in that area, I would say.</p> <p>23 Q. And how about Jeffrey Koch; what were his</p> <p>24 rates?</p> <p>25 A. Jeffrey Peterson.</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. Absolutely.</p> <p>2 A. Because I don't specifically recall what it was</p> <p>3 in 2013. Oh, it was 375 in 2013. So I haven't</p> <p>4 raised the rates since then.</p> <p>5 Q. Since 2013 when you received this file up to</p> <p>6 today, you still charge \$375 an hour for your</p> <p>7 services?</p> <p>8 A. The company does, yes.</p> <p>9 Q. I understand. Is it \$375 an hour for anything</p> <p>10 that you do on the file?</p> <p>11 A. Yes.</p> <p>12 Q. Including deposition time?</p> <p>13 A. Yes.</p> <p>14 Q. Trial time?</p> <p>15 A. Yes.</p> <p>16 Q. Travel time?</p> <p>17 A. Yes.</p> <p>18 Q. Any form of investigation is \$375 an hour?</p> <p>19 A. Yes. If I again remember to fill out paperwork</p> <p>20 to get that accomplished, of course.</p> <p>21 Q. Were there any other engineers working on the</p> <p>22 file with you?</p> <p>23 A. Yes.</p> <p>24 Q. Who else worked on the file with you?</p> <p>25 A. Jeff Peterson.</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. I'm sorry. I underlined the wrong Jeffrey on</p> <p>2 your masthead here.</p> <p>3 Jeffrey Peterson, what were his rates?</p> <p>4 A. Jeff Peterson was probably about 250, I would</p> <p>5 say.</p> <p>6 Q. And I'm looking at your billing there that</p> <p>7 we've marked as Exhibit 27, and there's a</p> <p>8 number of different individuals listed on what</p> <p>9 I call the masthead.</p> <p>10 A. Yes.</p> <p>11 Q. And you're first on that list, and the</p> <p>12 engineering group is called Skogen Engineering</p> <p>13 Group?</p> <p>14 A. It is.</p> <p>15 Q. Are you the sole owner of Skogen Engineering</p> <p>16 Group?</p> <p>17 A. No, sir.</p> <p>18 Q. What percentage do you own, sir?</p> <p>19 A. 22 percent.</p> <p>20 Q. Who owns the other 78 percent?</p> <p>21 A. Jeffrey Peterson, Robert Wozniak,</p> <p>22 W-o-z-n-i-a-k.</p> <p>23 Q. Anybody else?</p> <p>24 A. Excuse me. Mary Stoflet, S-t-o-f-l-e-t, James</p> <p>25 Torpy, T-o-r-p-y, Paul Erdtmann,</p>

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<p style="text-align: right;">Page 38</p> <p>1 E-r-d-t-m-a-n-n. That's the extent.</p> <p>2 Q. Do you share equal -- Strike that. Do you</p> <p>3 share by percentage ownership in the profits of</p> <p>4 Skogen Engineering Group?</p> <p>5 A. Yes and no.</p> <p>6 Q. Okay. Do you receive a salary?</p> <p>7 A. Yes. And when I say the profits, we have a</p> <p>8 401(k) plan, so it depends upon, as I</p> <p>9 understand it, what the -- what salaries were</p> <p>10 received by people.</p> <p>11 Q. Okay.</p> <p>12 A. Rather than what the percentage of stock</p> <p>13 ownership is.</p> <p>14 Q. Fair enough.</p> <p>15 In the last three years, have you</p> <p>16 owned any greater percentage other than 22</p> <p>17 percent?</p> <p>18 A. Three years ago, it was probably closer to 25</p> <p>19 percent.</p> <p>20 Q. Okay. Who makes the decision as to whether or</p> <p>21 not a new partner comes on and takes a</p> <p>22 percentage of ownership?</p> <p>23 A. Myself, Mr. Peterson, Mr. Wozniak,</p> <p>24 Mr. Erdtmann, Mr. Torpy and Ms. Stoflet.</p> <p>25 Q. Does it have to be a hundred percent agreement</p>	<p style="text-align: right;">Page 40</p> <p>1 MR. ROGERS: Object to the form. Go</p> <p>2 ahead.</p> <p>3 A. Perhaps three years ago. We had some leftover</p> <p>4 money last year, I know that. Not a lot, but</p> <p>5 we had some leftover.</p> <p>6 MR. TAYLOR:</p> <p>7 Q. You've also brought with you --</p> <p>8 (Exhibit 28 marked for</p> <p>9 identification.)</p> <p>10 Q. -- marking your file copy, a copy of your</p> <p>11 curriculum vitae, which I'm marking as</p> <p>12 Exhibit 28 to your deposition.</p> <p>13 A. Yes.</p> <p>14 Q. Is that a current copy?</p> <p>15 A. Yes.</p> <p>16 Q. Anything you need to add or delete from that</p> <p>17 curriculum vitae?</p> <p>18 A. No.</p> <p>19 Q. I noticed in your file that there are not</p> <p>20 copies of the reports from Gray Beauchamp and</p> <p>21 Steve Fenton regarding their accident</p> <p>22 reconstruction. Did I just miss them?</p> <p>23 A. Those were attached to answers to</p> <p>24 interrogatories, which I received after the</p> <p>25 report was written.</p>
<p style="text-align: right;">Page 39</p> <p>1 to bring on a new partner?</p> <p>2 A. We never thought of that. That's our group of</p> <p>3 stockholders. It's also our board of</p> <p>4 directors.</p> <p>5 But we are usually unanimous if we</p> <p>6 decide that there's going to be another</p> <p>7 stockholder.</p> <p>8 Q. So you have -- You get paid a salary, is that</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. And then profits are divided by -- in terms of</p> <p>12 401(k) distribution; is that what I</p> <p>13 understand?</p> <p>14 A. Yes. Yes.</p> <p>15 Q. Is there any other means by which profits are</p> <p>16 distributed?</p> <p>17 A. If we have leftover from 401(k) and from the</p> <p>18 donations we make, and it happens upon</p> <p>19 occasions, we then distribute some leftover</p> <p>20 money to the stockholders based upon their</p> <p>21 percentage of ownership.</p> <p>22 Q. Has there ever been a year in the last four</p> <p>23 years where you have not received some leftover</p> <p>24 money that was distributed by percentage of</p> <p>25 ownership to the stockholders?</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. Was there anything about Mr. Fenton or</p> <p>2 Mr. Beauchamp's report that changed or altered</p> <p>3 your opinions in this case?</p> <p>4 A. No.</p> <p>5 Q. May I see that other stack of materials?</p> <p>6 A. Yes.</p> <p>7 Q. I must have been asleep at the wheel when I</p> <p>8 looked at them and didn't have my coffee yet.</p> <p>9 A. I know I had them, and if they're not there I</p> <p>10 wouldn't know why. The one I received was</p> <p>11 Mr. Beauchamp. I recall reading it.</p> <p>12 Q. Sure. Who prepared the indexed deposition of</p> <p>13 Scott Stoffel?</p> <p>14 A. I did, and Mary Stoflet typed it.</p> <p>15 Q. Okay. We'll mark that as Exhibit 29 to your</p> <p>16 deposition.</p> <p>17 (Exhibit 29 marked for</p> <p>18 identification.)</p> <p>19 Q. What's in -- Do you know what's in this</p> <p>20 envelope here? It has a No. 26075 on it. Oh.</p> <p>21 Scott Stoffel deposition exhibits. How about</p> <p>22 that?</p> <p>23 A. Yes. It's the transcript and the exhibits. I</p> <p>24 printed out the transcript.</p> <p>25 Q. Did you make any summary of the trooper's</p>

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<p style="text-align: right;">Page 42</p> <p>1 deposition?</p> <p>2 A. Not a summary, but an index, which is in the</p> <p>3 front of the folder you're holding.</p> <p>4 Q. I'm going to mark that index as Exhibit 30 to</p> <p>5 your deposition.</p> <p>6 (Exhibit 30 marked for</p> <p>7 identification.)</p> <p>8 Q. Did you review the deposition -- Strike that.</p> <p>9 Did you review the report of Gray Beauchamp?</p> <p>10 A. Yes.</p> <p>11 Q. Did you make any notes about it?</p> <p>12 A. No.</p> <p>13 Q. Here it is. Is this your revised Rule 26 list?</p> <p>14 A. Yes.</p> <p>15 Q. Let me mark as Exhibit 31 a revised Rule 26</p> <p>16 list that you have brought with you this</p> <p>17 morning.</p> <p>18 (Exhibit 31 marked for</p> <p>19 identification.)</p> <p>20 Q. Is it up-to-date as to the last time you made a</p> <p>21 trial appearance on October the 10th, 2016?</p> <p>22 A. Yes. But it's not a revision. It's an</p> <p>23 addition, an up-to-date. It's not revised</p> <p>24 in terms of the headings that would have been</p> <p>25 in the other previously provided Rule 26</p>	<p style="text-align: right;">Page 44</p> <p>1 ahead and mark this Exhibit 32 and she can</p> <p>2 duplicate it for us. Okay?</p> <p>3 A. Yes, sir.</p> <p>4 (Exhibit 32 marked for</p> <p>5 identification.)</p> <p>6 Q. Thank you.</p> <p>7 There's another folder here, it looks</p> <p>8 like with your case number on it, 26705, it has</p> <p>9 a CD that says "Below, Joshua photographs"?</p> <p>10 A. Yes.</p> <p>11 Q. And then that was attached to some printouts of</p> <p>12 some photographs of the accident scene, is that</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. And those have been Bates labeled and produced</p> <p>16 to me already. We don't need to mark them</p> <p>17 again.</p> <p>18 There's some additional photographs</p> <p>19 Bates labeled SKO42 through 64. Whose</p> <p>20 photographs are those? If you know.</p> <p>21 A. Offhand I don't recall. It may be</p> <p>22 Mr. Peterson's, but they may have been provided</p> <p>23 to us also.</p> <p>24 Q. Okay. Some additional accident scene</p> <p>25 photographs Bates labeled BEL050004 through</p>
<p style="text-align: right;">Page 43</p> <p>1 list.</p> <p>2 Q. Sure. Did you drop some off the top since</p> <p>3 those dates had expired?</p> <p>4 A. I probably did, yes, because it's a four-year</p> <p>5 list.</p> <p>6 Q. Sure. Do you keep anywhere a list -- That's</p> <p>7 Exhibit 31, correct?</p> <p>8 A. Yes.</p> <p>9 Q. Do you keep anywhere a list of depositions or</p> <p>10 trial testimony that goes further back than</p> <p>11 four years?</p> <p>12 A. No.</p> <p>13 Q. Let me hand you this back, sir.</p> <p>14 A. Yes.</p> <p>15 Q. Also in your file is a CD that says "Inspection</p> <p>16 photographs 1 through 336" taken November the</p> <p>17 4th, 2013, August the 11th, 2014, and 9/22/15?</p> <p>18 A. Is it the 4th or the 14th? But yes, those are</p> <p>19 our pictures.</p> <p>20 Q. It's hard to read from there. I apologize. I</p> <p>21 hand it to you?</p> <p>22 A. Yes. Those are our photographs taken by</p> <p>23 Mr. Peterson and myself.</p> <p>24 Q. Okay. I believe I've been given a copy of all</p> <p>25 of those, but just in case, I'm going to go</p>	<p style="text-align: right;">Page 45</p> <p>1 BEL050019. Do you know where those came</p> <p>2 from?</p> <p>3 A. They were sent to us from Mr. Rottier's office,</p> <p>4 but they appear to be police-taken</p> <p>5 photographs.</p> <p>6 Q. There's some manila folders in here. The first</p> <p>7 one is "Vehicle Specifications." Is that your</p> <p>8 handwriting on the first page of that document?</p> <p>9 A. Some is, but most is not. It's Mr. Zuelhke.</p> <p>10 Q. Next manila folder is the correspondence</p> <p>11 between you and Mr. Rottier's firm, is that</p> <p>12 correct?</p> <p>13 A. Or between my office and Mr. Rottier's firm,</p> <p>14 yes.</p> <p>15 Q. Fair enough. Fair enough.</p> <p>16 The next manila folder is the police</p> <p>17 materials that also contain the police report</p> <p>18 and the policeman's photographs, is that</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. I'm going to mark the next manila folder</p> <p>22 as Exhibit 33.</p> <p>23 (Exhibit 33 marked for</p> <p>24 identification.)</p> <p>25 Q. Can you tell us what that is, sir?</p>

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<p style="text-align: right;">Page 46</p> <p>1 A. Yes. Exhibit 33 contains SK0129 through</p> <p>2 SK0135, and they are eight-by-ten color photos</p> <p>3 of the area where the accident occurred. It's</p> <p>4 from the Google Earth Street View.</p> <p>5 Q. Whose handwriting is on those photographs?</p> <p>6 A. Mr. Peterson.</p> <p>7 (Exhibit 34 marked for</p> <p>8 identification.)</p> <p>9 Q. Let me hand you what I've marked as Exhibit 34.</p> <p>10 This is a manila folder marked "Calculations,"</p> <p>11 is that correct?</p> <p>12 A. Yes, it is.</p> <p>13 Q. Is that the entirety of the calculations that</p> <p>14 you've performed in this matter in order to</p> <p>15 render your opinions in this case?</p> <p>16 A. Yes.</p> <p>17 (Exhibit 35 marked for</p> <p>18 identification.)</p> <p>19 Q. I hand you what's been marked as Exhibit 35 to</p> <p>20 your deposition. It's a manila folder marked</p> <p>21 "Inspection Notes." What's that?</p> <p>22 A. These are the notes generated at the time of --</p> <p>23 times actually of the inspections of the</p> <p>24 accident site, and also notes containing such</p> <p>25 as the September 22nd, 2015 inspection by</p>	<p style="text-align: right;">Page 48</p> <p>1 A. I don't mind at all.</p> <p>2 Q. Fantastic.</p> <p>3 (Exhibit 36 marked for</p> <p>4 identification.)</p> <p>5 Q. Last thing for now that I'd like to mark as</p> <p>6 Exhibit 36 is SK0078, and it's a full diagram</p> <p>7 of the accident scene, is that correct?</p> <p>8 A. Yes, it is.</p> <p>9 Q. Excuse me. Is this something your office put</p> <p>10 together?</p> <p>11 A. It is.</p> <p>12 Q. And does it depict the accident scene and what</p> <p>13 you believe to be the movement of the vehicle</p> <p>14 during the accident sequence?</p> <p>15 A. Yes.</p> <p>16 Q. Have you noted on there indications where</p> <p>17 certain items were found?</p> <p>18 A. Yes.</p> <p>19 Q. Debris?</p> <p>20 A. Yes.</p> <p>21 Q. All right. We're going to come back to this.</p> <p>22 Did you request anything else to</p> <p>23 review that you have not received?</p> <p>24 A. No.</p> <p>25 Q. Does your opinion that we've marked as Exhibit</p>
<p style="text-align: right;">Page 47</p> <p>1 myself of the Yokohama tire, and it's SK0143.</p> <p>2 Exhibit 25 contains SK0138 through,</p> <p>3 and provided they're still in numerical order,</p> <p>4 SK0149.</p> <p>5 Q. Is Exhibit 35 the entirety of the handwritten</p> <p>6 inspection notes that exist related to this</p> <p>7 file?</p> <p>8 A. Yes.</p> <p>9 Q. Are there any other electronic notes that exist</p> <p>10 related to this file that you have not brought</p> <p>11 with you?</p> <p>12 A. No.</p> <p>13 Q. Somehow this piece of correspondence got</p> <p>14 separated from the stack. Sorry about that.</p> <p>15 A. Yes. SK065 is the cover letter from my report</p> <p>16 that was sent to Mr. Rottier, and we marked --</p> <p>17 I thought we marked the report. Maybe we did</p> <p>18 not.</p> <p>19 Q. Exhibit 26, yes, sir, we did.</p> <p>20 A. Yes. So this be would the cover letter for</p> <p>21 Exhibit 26.</p> <p>22 Q. Fair enough. Do you mind if we not make that</p> <p>23 part of Exhibit 26?</p> <p>24 A. No.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 49</p> <p>1 -- Strike that. Does your report that we've</p> <p>2 marked as Exhibit 26 reflect your current</p> <p>3 opinions that you intend to offer in this</p> <p>4 case?</p> <p>5 A. Yes. Not all of them, but some of them</p> <p>6 certainly.</p> <p>7 Q. Sure. Well, with regard to the accident</p> <p>8 reconstruction it does, right?</p> <p>9 A. It doesn't have the speed on the drawing. But</p> <p>10 the drawing does show the accident sequence,</p> <p>11 yes.</p> <p>12 Q. I apologize. And I had switched gears on you.</p> <p>13 I'm not trying to be tricky. I was talking</p> <p>14 about your report marked as Exhibit 26.</p> <p>15 A. Oh, I'm sorry.</p> <p>16 Q. Yes, sir.</p> <p>17 A. I thought you were talking about the drawing.</p> <p>18 Q. Well, I was talking that way and you're sitting</p> <p>19 this way, so it's my fault.</p> <p>20 A. That's right. It's -- The report does contain</p> <p>21 my opinions, yes.</p> <p>22 Q. Thank you, sir.</p> <p>23 A. And let me get that in front of me so we can</p> <p>24 talk about it.</p> <p>25 Q. Sure. Well, we're going to skip around just a</p>

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<p style="text-align: right;">Page 50</p> <p>1 little bit.</p> <p>2 Did you ever meet with anybody about</p> <p>3 this accident?</p> <p>4 A. No. Well, I certainly met with Mr. Rottier and</p> <p>5 talked to him about the accident.</p> <p>6 Q. Sure. Anybody else?</p> <p>7 A. No. Not outside of our office, no, no one</p> <p>8 else.</p> <p>9 Q. Didn't meet with the eyewitness?</p> <p>10 A. I did not.</p> <p>11 Q. You have not met Mr. Below?</p> <p>12 A. I have not.</p> <p>13 Q. You didn't meet with the police officer?</p> <p>14 A. I did not.</p> <p>15 Q. The notes indicate that you first inspected the</p> <p>16 scene on August the 11th, 2014?</p> <p>17 A. I did not. Mr. Peterson did.</p> <p>18 Q. Okay. Have you ever been to the scene?</p> <p>19 A. I have, but not for purposes of this accident.</p> <p>20 I've been through there many times.</p> <p>21 Q. Driven through there?</p> <p>22 A. Correct.</p> <p>23 Q. All right. Have you ever stopped at this</p> <p>24 accident scene to perform any type of</p> <p>25 investigation related to this accident?</p>	<p style="text-align: right;">Page 52</p> <p>1 the inspection was made August 11th, 2014.</p> <p>2 Q. Uh-huh. What did Mr. -- Well, strike that.</p> <p>3 Was anyone else beside Mr. Peterson at the</p> <p>4 scene of the accident on August the 11th,</p> <p>5 2014?</p> <p>6 A. Yes.</p> <p>7 Q. Who else?</p> <p>8 A. Investigator Tom Malone of Mr. Rottier's</p> <p>9 office.</p> <p>10 Q. Anybody else?</p> <p>11 A. No.</p> <p>12 Q. Did Mr. Malone assist in the investigation of</p> <p>13 the accident scene?</p> <p>14 A. Yes.</p> <p>15 Q. In what means?</p> <p>16 A. In holding the survey stick so the survey could</p> <p>17 be generated, and the points generated shown on</p> <p>18 SKOGEN139 through 142 contained in</p> <p>19 Exhibit 20 -- 35.</p> <p>20 Q. What was Mr. Peterson's purpose for going to</p> <p>21 the scene on August the 11th, 2014?</p> <p>22 A. To survey the accident site and to preserve any</p> <p>23 evidence that may still have been present.</p> <p>24 Q. Did he survey the accident scene?</p> <p>25 A. Yes, he did.</p>
<p style="text-align: right;">Page 51</p> <p>1 A. I did not stop, you're correct.</p> <p>2 Q. All right. So Mr. Peterson went to the scene</p> <p>3 on August the 11th, 2014, is that right?</p> <p>4 A. That's correct.</p> <p>5 Q. Do you know why there was almost a year between</p> <p>6 the accident and when Mr. Peterson first went</p> <p>7 to the scene?</p> <p>8 A. No.</p> <p>9 Q. Are you aware of the fact that the accident</p> <p>10 scene is right around a hundred miles from your</p> <p>11 office?</p> <p>12 A. I wouldn't doubt it. I don't know that to be a</p> <p>13 fact.</p> <p>14 Q. It's not -- It's pretty close by?</p> <p>15 A. It's not a long ways away.</p> <p>16 Q. That's my point.</p> <p>17 Do you know why there was that gap in</p> <p>18 time?</p> <p>19 A. No, I don't, but it's not unusual for a client</p> <p>20 to have us open a file and then gather</p> <p>21 information, and particularly in Wisconsin over</p> <p>22 the last several years, the officers have been,</p> <p>23 I hate to use the word slow to release the</p> <p>24 police reports and photographs.</p> <p>25 But I don't know the exact reason why</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. Is that part of the exhibit that you just</p> <p>2 referenced?</p> <p>3 A. Yes. The downloaded survey points. He used a</p> <p>4 total station, and so the downloaded survey</p> <p>5 points are contained on SKO139 through SKO142</p> <p>6 in Exhibit 25 -- or 35.</p> <p>7 May I write the 3 better so it doesn't</p> <p>8 look like a 2?</p> <p>9 Q. Are you saying my handwriting is messy?</p> <p>10 A. No. Every time I look at it, it looks like a 2</p> <p>11 instead of a 3.</p> <p>12 Q. Fair enough. Here's a pen.</p> <p>13 A. Thank you. Thank you.</p> <p>14 Q. Thank you. Appreciate that.</p> <p>15 Do you know how long Mr. Peterson</p> <p>16 spent at the scene during that first</p> <p>17 inspection?</p> <p>18 A. I wasn't there, so I don't know how long.</p> <p>19 Typically it would be three, four hours. But I</p> <p>20 don't know how long he was there.</p> <p>21 Q. And he did it by total station?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know what his reference point was?</p> <p>24 A. I don't know if he tied it into some other</p> <p>25 reference point, but usually it doesn't matter</p>

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<p style="text-align: right;">Page 54</p> <p>1 because you set up the total station and you</p> <p>2 survey the points.</p> <p>3 Q. Uh-huh.</p> <p>4 A. And then the points are related to each other,</p> <p>5 and they don't need to be related to the</p> <p>6 total station location or a reference point per</p> <p>7 se.</p> <p>8 Q. Are you aware of whether Mr. Peterson was able</p> <p>9 to retrieve any evidence from the scene that</p> <p>10 day?</p> <p>11 A. I do understand that there were some pieces of</p> <p>12 evidence still present, some pieces of tire and</p> <p>13 broken glass and scallop marks and that sort of</p> <p>14 thing in the shoulder -- or in the median.</p> <p>15 Q. Sure. What -- Which -- Let me start over.</p> <p>16 Which pieces of evidence did Mr. Peterson</p> <p>17 actually retrieve from the scene, if any? Did</p> <p>18 he pick up anything and bring it back to the</p> <p>19 office with him?</p> <p>20 A. I don't see that he did. SK0147 indicates the</p> <p>21 survey points of the biggest tire piece and</p> <p>22 photographs were taken. Then there were some</p> <p>23 other tire fragments. But photos were taken.</p> <p>24 I don't recall those being picked up, however,</p> <p>25 the smaller pieces, and there were flags</p>	<p style="text-align: right;">Page 56</p> <p>1 truck?</p> <p>2 A. Not of which I'm aware.</p> <p>3 Q. You've been to enough accident scenes to</p> <p>4 know that there's a lot of tire fragments</p> <p>5 on the roadways of United States, aren't</p> <p>6 there?</p> <p>7 MR. ROGERS: Object to form. Go</p> <p>8 ahead.</p> <p>9 A. Well, if you take the whole United States, I</p> <p>10 suppose there are a lot of tire fragments. But</p> <p>11 it's not something you just find on all roads</p> <p>12 in all places at all times.</p> <p>13 MR. TAYLOR:</p> <p>14 Q. Really?</p> <p>15 A. Of course not.</p> <p>16 Q. Really?</p> <p>17 A. That's right.</p> <p>18 Q. In Wisconsin you don't find tire fragments,</p> <p>19 like you couldn't walk out on the interstate</p> <p>20 right now and find tire fragments almost --</p> <p>21 along the way?</p> <p>22 A. If you go out on the interstate right now, you</p> <p>23 probably could find some semi separated tires.</p> <p>24 But my experience having surveyed the</p> <p>25 interstate many, many times, you don't find</p>
<p style="text-align: right;">Page 55</p> <p>1 marked, and you may see those in Mr. Peterson's</p> <p>2 photographs, the survey evidence.</p> <p>3 I don't -- I'm not aware that</p> <p>4 Mr. Peterson picked up any of the evidence at</p> <p>5 the time of the April -- or pardon me,</p> <p>6 August 11th, 2014 survey.</p> <p>7 Q. By what means did Mr. Peterson verify that the</p> <p>8 tire fragments that he found on the scene</p> <p>9 almost a year after the accident were related</p> <p>10 to this particular accident?</p> <p>11 A. A subsequent study revealed that the tread</p> <p>12 pattern was the same for the tire and the other</p> <p>13 tires.</p> <p>14 Q. Was that on the big piece of tire that he</p> <p>15 found?</p> <p>16 A. Yes.</p> <p>17 Q. What about the fragments that he found?</p> <p>18 A. I don't know if he correlated those to where</p> <p>19 they came from, from this tire or from</p> <p>20 something else. I don't know that to be a</p> <p>21 fact.</p> <p>22 Q. Has anybody since then made any effort to</p> <p>23 correlate the tire fragments that were found</p> <p>24 at the scene in August of 2014 to the actual</p> <p>25 tire that failed on Mr. Below's pickup</p>	<p style="text-align: right;">Page 57</p> <p>1 that many.</p> <p>2 Q. Okay. Y'all do a better job of cleaning your</p> <p>3 roadways than we do in Texas. Congratulations.</p> <p>4 A. Thank you.</p> <p>5 Q. There was a subsequent inspection of the</p> <p>6 accident scene in November of 2014, is that</p> <p>7 right?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Who did the subsequent inspection of the</p> <p>10 accident scene?</p> <p>11 A. Mr. Peterson.</p> <p>12 Q. Do you know why he did a second or subsequent</p> <p>13 inspection?</p> <p>14 A. Yes, I do.</p> <p>15 Q. Why?</p> <p>16 A. Because he wanted to measure the -- I'll call</p> <p>17 them rumble strips. Some people call them</p> <p>18 wake-me-up strips along the side of the road,</p> <p>19 and he wanted to use those and measure those</p> <p>20 for use in analyzing the photographs taken by</p> <p>21 the officers.</p> <p>22 And that's shown in SK0144 in</p> <p>23 Exhibit 35.</p> <p>24 Q. Did Mr. Peterson do anything else on that</p> <p>25 second survey -- strike that, on that second</p>

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<p style="text-align: right;">Page 58</p> <p>1 inspection on November 17th, 2014?</p> <p>2 MR. ROGERS: I'm sorry.</p> <p>3 MR. TAYLOR: Yeah. It was a horrible</p> <p>4 question. Let me start all over. Yeah. No.</p> <p>5 It was me. Let me start all over.</p> <p>6 Q. Other than measuring the rumble strips during</p> <p>7 that inspection in November of 2014, are you</p> <p>8 aware of Mr. Peterson doing anything else?</p> <p>9 A. No.</p> <p>10 Q. That was his sole purpose in going out there?</p> <p>11 A. Yes.</p> <p>12 Q. Did anyone else attend the November 17th, 2014</p> <p>13 inspection?</p> <p>14 A. No.</p> <p>15 Q. Do you know how long he spent during that</p> <p>16 inspection looking at the rumble strips?</p> <p>17 A. If you're asking me do I know having been there</p> <p>18 to watch him do it and time him, the answer</p> <p>19 would be no. But I would say probably less</p> <p>20 than an hour.</p> <p>21 Q. Are his notes reflected in Exhibit 35?</p> <p>22 A. Yes.</p> <p>23 Q. Other than correlating the size of the rumble</p> <p>24 strips with the photographs taken by the</p> <p>25 police, was there any other purpose that you're</p>	<p style="text-align: right;">Page 60</p> <p>1 A. On the pavement surface? No. Not of which I'm</p> <p>2 aware, he did not.</p> <p>3 Q. So no tire marks, no gouge marks on the roadway</p> <p>4 that he found?</p> <p>5 A. That's correct, at the time of his</p> <p>6 inspection.</p> <p>7 Q. Sure. And you already mentioned in answer to</p> <p>8 one of the questions, that he did find some</p> <p>9 markings from the subject vehicle in the</p> <p>10 median?</p> <p>11 A. Yes.</p> <p>12 Q. Did he find any on the other side of the</p> <p>13 roadway where the vehicle ended up?</p> <p>14 A. Not of which I'm aware.</p> <p>15 Q. Okay. I understand from your report that you</p> <p>16 guys measured the width of the roadway, is that</p> <p>17 right?</p> <p>18 A. Yes.</p> <p>19 Q. Did you make an assessment of the dropoff</p> <p>20 between the edge of the roadway and the center</p> <p>21 of the median where the vehicle traveled?</p> <p>22 A. I'm sure it was surveyed, but I don't have a</p> <p>23 number particularly in mind for that without</p> <p>24 studying the survey further.</p> <p>25 Q. It would be in the survey documents?</p>
<p style="text-align: right;">Page 59</p> <p>1 aware of of measuring the rumble strips at the</p> <p>2 accident scene?</p> <p>3 A. No.</p> <p>4 Q. Has anyone else from your office been to the</p> <p>5 scene of the accident to investigate it?</p> <p>6 A. Not of which I'm aware, no.</p> <p>7 Q. During -- I'm going to go ahead and roll both</p> <p>8 inspections into one, if that's all right, with</p> <p>9 the next set of questions.</p> <p>10 A. That's fine.</p> <p>11 Q. During either inspection, did Mr. Peterson find</p> <p>12 any tire marks on the roadway?</p> <p>13 A. Not of which I'm aware, no.</p> <p>14 Q. Had the roadway been resurfaced between the</p> <p>15 time of the accident and when Mr. Peterson</p> <p>16 first went to the scene?</p> <p>17 A. Not of which I am aware, no.</p> <p>18 Q. During that first inspection, did Mr. Peterson</p> <p>19 mark the scene, with tape or spray paint?</p> <p>20 A. Not of which I'm aware, no.</p> <p>21 Q. You're just not aware?</p> <p>22 A. Well, I knew they used flags. But as far as</p> <p>23 spray paint, I would say no, they did not.</p> <p>24 Q. Did Mr. Peterson find any gouge marks on the</p> <p>25 actual roadway?</p>	<p style="text-align: right;">Page 61</p> <p>1 A. Yes.</p> <p>2 Q. Okay. The photographs that we've marked that</p> <p>3 are from the scene, Mr. Peterson would have</p> <p>4 taken all of those?</p> <p>5 A. Yes. The photograph taken at the site at the</p> <p>6 time of his inspection? Yes.</p> <p>7 Q. Fair enough. He wasn't at the actual scene of</p> <p>8 the accident?</p> <p>9 A. Correct. I call that when the accident</p> <p>10 occurred, and those photographs were taken by</p> <p>11 the officers.</p> <p>12 Q. That's a much more precise way of referring to</p> <p>13 it.</p> <p>14 A. Thank you.</p> <p>15 Q. Scene versus the site.</p> <p>16 A. Thank you.</p> <p>17 Q. Gotcha. I'm going to adopt that from here on</p> <p>18 out.</p> <p>19 A. You go right ahead.</p> <p>20 Q. Learn something new every day.</p> <p>21 Let's go back to the subpoena duces</p> <p>22 tecum for just a second, which I believe is</p> <p>23 Exhibit 25.</p> <p>24 A. It is.</p> <p>25 Q. Did you perform -- Strike that. Did you offer</p>

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<p style="text-align: right;">Page 62</p> <p>1 any videotaped or recorded interviews related</p> <p>2 to this accident?</p> <p>3 A. Did I offer? I not only didn't offer any, I</p> <p>4 haven't seen any.</p> <p>5 Q. Did you participate in any?</p> <p>6 A. No. There is that recorded statement that I</p> <p>7 told you about before from a witness. But no.</p> <p>8 I have not participated in any videotaped or</p> <p>9 recorded interview, nor has my office.</p> <p>10 Q. You brought with you all the correspondence</p> <p>11 between your company and Mr. Rottier's law</p> <p>12 firm, correct?</p> <p>13 A. Yes.</p> <p>14 Q. You brought with you all records of payment in</p> <p>15 connection with this particular file, correct?</p> <p>16 A. I brought with the invoices which were sent</p> <p>17 out. I expect they were paid, so it would be</p> <p>18 the same.</p> <p>19 Q. If not, you should get a check before you</p> <p>20 leave.</p> <p>21 A. Okay. Thank you.</p> <p>22 Q. Do you have any articles or publications that</p> <p>23 you've written or contributed to that you</p> <p>24 brought with you?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 64</p> <p>1 A. Yes.</p> <p>2 Q. And by what means?</p> <p>3 A. If I recall properly, we're on the Internet.</p> <p>4 There's a website, skogenengineering.com. I</p> <p>5 haven't looked at it for a number of years, so</p> <p>6 I'm not sure what it says.</p> <p>7 Q. Anything else?</p> <p>8 A. There may be a brochure that's handed out at</p> <p>9 presentations by Mary Stoflet, to the best of</p> <p>10 my recollection. I haven't seen that for a</p> <p>11 long time either.</p> <p>12 Q. Advertising is not your -- not your area of</p> <p>13 concern?</p> <p>14 A. No. And we don't -- I wouldn't call it</p> <p>15 advertising, but it's information, because</p> <p>16 we're asked questions. And my CV is on the</p> <p>17 website, as an example. But I personally don't</p> <p>18 advertise.</p> <p>19 Q. Your CV is pretty good advertising, isn't it?</p> <p>20 You don't have to answer that. I'm just --</p> <p>21 A. I don't consider it an ad. I just consider</p> <p>22 people want to know who I am and my</p> <p>23 experience.</p> <p>24 Q. Sure. Sure.</p> <p>25 Did you review any documents produced</p>
<p style="text-align: right;">Page 63</p> <p>1 Q. Do you have a publications list?</p> <p>2 A. No. I haven't written anything except my</p> <p>3 master's thesis.</p> <p>4 Q. Okay. You haven't been published in any sort</p> <p>5 of trade journal or otherwise?</p> <p>6 A. I have not.</p> <p>7 Q. Okay. Has anyone from Skogen Engineering been</p> <p>8 published on any type of issue related to</p> <p>9 accident reconstruction or vehicle dynamics?</p> <p>10 A. Not of which I'm aware.</p> <p>11 Q. Did you bring with you any articles or learned</p> <p>12 treatises or textbooks that you intend to rely</p> <p>13 upon for the opinions that you're going to</p> <p>14 offer in this case?</p> <p>15 A. No.</p> <p>16 Q. Did you provide Mr. Rottier or anyone in his</p> <p>17 office a list of learned treatises and articles</p> <p>18 that you intend to rely upon for your opinions</p> <p>19 in this case?</p> <p>20 A. No.</p> <p>21 Q. Do you have a list of learned treatises or</p> <p>22 publications that you intend to rely upon for</p> <p>23 your opinions in this case?</p> <p>24 A. No.</p> <p>25 Q. Does your company do any advertising, sir?</p>	<p style="text-align: right;">Page 65</p> <p>1 by Yokohama in this case?</p> <p>2 A. No.</p> <p>3 Q. Do you intend to?</p> <p>4 A. Not unless somebody sends me something and asks</p> <p>5 me to. I have no intention of doing so.</p> <p>6 MR. KRIVA: Off the record. How about</p> <p>7 a bathroom break?</p> <p>8 MR. TAYLOR: Sure. Absolutely.</p> <p>9 MR. KRIVA: For my</p> <p>10 younger-than-Dennis's kidneys?</p> <p>11 MR. TAYLOR: How about we go off the</p> <p>12 record completely with that note?</p> <p>13 THE VIDEOGRAPHER: Going off the</p> <p>14 record at 10:12.</p> <p>15 (A break was taken from 10:12 to</p> <p>16 10:26.)</p> <p>17 (Exhibit 37 marked for</p> <p>18 identification.)</p> <p>19 THE VIDEOGRAPHER: We are back on the</p> <p>20 record at 10:26 a.m.</p> <p>21 MR. TAYLOR:</p> <p>22 Q. Mr. Skogen, are you ready to proceed?</p> <p>23 A. Yes, sir.</p> <p>24 Q. All right. I have marked the statement of</p> <p>25 Chris Jessen as Exhibit 37 to your deposition,</p>

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<p style="text-align: right;">Page 66</p> <p>1 okay?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And that's the exhibit that you received</p> <p>4 apparently on September 19th, 2016?</p> <p>5 A. Yes.</p> <p>6 Q. And if you look at the beginning here, it looks</p> <p>7 like the statement was actually taken on</p> <p>8 February 22nd, 2016, is that right?</p> <p>9 A. Yes.</p> <p>10 Q. Did you or anyone else from Skogen Engineering</p> <p>11 have an opportunity to inspect the vehicle</p> <p>12 being driven by Mr. Below on the date of the</p> <p>13 accident?</p> <p>14 A. We did not inspect the vehicle, nor the</p> <p>15 trailer, nor any of the contents.</p> <p>16 Q. You already answered my next question. You did</p> <p>17 not get an opportunity to inspect the trailer</p> <p>18 either, is that right?</p> <p>19 A. We did not do so, you are correct.</p> <p>20 Q. Did you have an opportunity to inspect either</p> <p>21 of the all-terrain vehicles or ATVs that were</p> <p>22 being pulled on the trailer on the date of the</p> <p>23 accident?</p> <p>24 A. We did not inspect them.</p> <p>25 Q. Would you agree with me that it's possible that</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. Okay. If you had had an opportunity to inspect</p> <p>2 the subject vehicle, one of the things that you</p> <p>3 could have inspected would have been the</p> <p>4 steering mechanism or system in the vehicle,</p> <p>5 right?</p> <p>6 A. There's a possibility.</p> <p>7 Q. Well, if you'd have been to inspect it, it</p> <p>8 would have been there, right?</p> <p>9 A. Yes.</p> <p>10 Q. It would have had a steering system?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Is that something that you would have</p> <p>13 inspected had you inspected the vehicle?</p> <p>14 A. Probably not.</p> <p>15 Q. Why not?</p> <p>16 A. Because I didn't understand there was any</p> <p>17 alleged problem with the steering. From what I</p> <p>18 understood, and the officer's deposition</p> <p>19 confirmed and witnesses confirmed, it was a</p> <p>20 blowout of the right rear tire. I didn't</p> <p>21 understand that there was a defect in the</p> <p>22 steering system or the brake system or any</p> <p>23 other system that caused the vehicle to go out</p> <p>24 of control.</p> <p>25 Q. But by the time you issued your report, you had</p>
<p style="text-align: right;">Page 67</p> <p>1 if you had had an opportunity to inspect the</p> <p>2 vehicle, you might have additional opinions</p> <p>3 that you could offer in this case?</p> <p>4 A. That's possible.</p> <p>5 MR. ROGERS: Object to form. Go</p> <p>6 ahead.</p> <p>7 A. Yes.</p> <p>8 MR. TAYLOR:</p> <p>9 Q. If you had been able to inspect the subject</p> <p>10 vehicle -- Strike that. What was the vehicle</p> <p>11 that Mr. Below was driving that day?</p> <p>12 A. It was -- I can tell you exactly here. I'll</p> <p>13 reference my report that we marked as</p> <p>14 Exhibit --</p> <p>15 Q. Exhibit 26?</p> <p>16 A. 26. And I have my model vehicle data sheet</p> <p>17 also. It was a 2005 GMC K2500 extended-cab</p> <p>18 pickup.</p> <p>19 Q. If I refer to that vehicle as the subject</p> <p>20 vehicle, is that okay with you?</p> <p>21 A. That's fine with me.</p> <p>22 Q. Do you understand what I mean when I say</p> <p>23 subject vehicle?</p> <p>24 A. Yes. I understand that's the only vehicle</p> <p>25 involved. Yes, I do.</p>	<p style="text-align: right;">Page 69</p> <p>1 not received the eyewitness statement,</p> <p>2 correct?</p> <p>3 A. I had not.</p> <p>4 Q. And you hadn't received the trooper's</p> <p>5 deposition yet, had you?</p> <p>6 A. No. But I had the police report, and the</p> <p>7 statements were contained therein.</p> <p>8 Q. Well, there were some preliminary statements</p> <p>9 contained therein, correct?</p> <p>10 A. Correct.</p> <p>11 Q. Not the long statement that we just marked as</p> <p>12 Exhibit 37, right?</p> <p>13 A. You are right.</p> <p>14 Q. And so let me see if I got this straight. Even</p> <p>15 if you had been given an opportunity to inspect</p> <p>16 the vehicle, you wouldn't have inspected the</p> <p>17 steering system?</p> <p>18 A. Some part, but not the entire steering system,</p> <p>19 no, I would not have.</p> <p>20 Q. Would you agree with me, sir, that a loose or</p> <p>21 worn steering connection can affect vehicle</p> <p>22 handling?</p> <p>23 A. Depends which connection you're talking about,</p> <p>24 but it's possible, yes.</p> <p>25 Q. If you had had an opportunity to inspect the</p>

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<p style="text-align: right;">Page 70</p> <p>1 vehicle, you could have inspected the braking</p> <p>2 system, is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. If you had had an opportunity to inspect the</p> <p>5 vehicle, you could have inspected any</p> <p>6 modifications or after-market things that had</p> <p>7 been done to the vehicle, is that correct?</p> <p>8 A. If there had been any, yes, I could have. It's</p> <p>9 a possibility again.</p> <p>10 Q. Are you aware of any after-market modifications</p> <p>11 that had been done to the subject vehicle?</p> <p>12 A. I'm aware there was a camper insert that the</p> <p>13 original vehicle probably didn't come with.</p> <p>14 Q. Uh-huh. Anything else?</p> <p>15 A. No.</p> <p>16 Q. For purposes of your analysis, did you assume</p> <p>17 everything else on the vehicle was original</p> <p>18 equipment?</p> <p>19 A. Generally, yes, I did.</p> <p>20 Q. If you had been afforded an opportunity to</p> <p>21 inspect the subject vehicle, you could have</p> <p>22 inspected the suspension system, is that</p> <p>23 right?</p> <p>24 A. Yes.</p> <p>25 Q. Do you agree that a worn or loose -- Strike</p>	<p style="text-align: right;">Page 72</p> <p>1 the police photographs, and there are</p> <p>2 photographs taken of the vehicle at the scene,</p> <p>3 and we could study those and perhaps have some</p> <p>4 information about the condition of those tires.</p> <p>5 But I have not done so to date.</p> <p>6 Q. Other than looking at the police photographs,</p> <p>7 do you have any other means of determining the</p> <p>8 condition of the tires that were on the</p> <p>9 vehicle other than the subject tire after</p> <p>10 the accident?</p> <p>11 A. Not of which I'm aware, no.</p> <p>12 Q. Do you agree that tire wear can be an indicator</p> <p>13 of tire pressure, balance or alignment?</p> <p>14 A. I have to qualify.</p> <p>15 Q. Sure.</p> <p>16 A. You mean accelerated tire wear, or uneven tire</p> <p>17 wear?</p> <p>18 Q. Sure.</p> <p>19 A. Tire wear, even if you you have perfect</p> <p>20 inflation and perfect alignment, perfect</p> <p>21 loading, everything else, you're going to have</p> <p>22 tire wear.</p> <p>23 Q. Absolutely.</p> <p>24 A. So if I'm understanding your question, you're</p> <p>25 talking about abnormal tire wear.</p>
<p style="text-align: right;">Page 71</p> <p>1 that. Do you agree that there are portions of</p> <p>2 the suspension system that could be worn or</p> <p>3 loose that could affect a vehicle's handling or</p> <p>4 stability?</p> <p>5 A. Yes.</p> <p>6 MR. ROGERS: Object to the form. Go</p> <p>7 ahead.</p> <p>8 A. As a possibility, yes, I do agree.</p> <p>9 MR. TAYLOR:</p> <p>10 Q. You did not have an opportunity to inspect the</p> <p>11 companion tires or the other tires on the</p> <p>12 vehicle, is that right?</p> <p>13 A. If you're asking me personally, no, I did</p> <p>14 not.</p> <p>15 Q. Did anybody that you're aware of?</p> <p>16 A. I'm -- I'm not aware of anyone from our office</p> <p>17 doing so.</p> <p>18 Q. Do you have any information with regard to the</p> <p>19 other three tires that were on the vehicle as</p> <p>20 to their size?</p> <p>21 A. No. Not readily available, no, I do not.</p> <p>22 Q. Do you have any information about the other</p> <p>23 three tires that were on the vehicle as to</p> <p>24 their condition prior to the accident?</p> <p>25 A. No. But please understand, we could look at</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. Well, not so much abnormal tire wear. Just in</p> <p>2 terms of how a tire is wearing can be</p> <p>3 indicative, for instance, of a tire being run</p> <p>4 underinflated or overinflated, correct?</p> <p>5 A. Yes.</p> <p>6 Q. You have that general understanding of tire</p> <p>7 wear?</p> <p>8 A. Yes.</p> <p>9 Q. And tire wear can be indicative of some type of</p> <p>10 misalignment that may be going on with a</p> <p>11 vehicle, correct?</p> <p>12 A. Yes. Toe in or camber, yes.</p> <p>13 Q. Absolutely.</p> <p>14 THE COURT REPORTER: Excuse me?</p> <p>15 A. Toe in and camber.</p> <p>16 MR. TAYLOR:</p> <p>17 Q. Would you agree with me that a vehicle that is</p> <p>18 misaligned to the point that its tires are</p> <p>19 wearing unevenly may also be a vehicle whose</p> <p>20 handling and stability are affected by that</p> <p>21 misalignment?</p> <p>22 MR. ROGERS: Object to the form. Go</p> <p>23 ahead.</p> <p>24 A. There's a possibility, yes, I agree.</p> <p>25 MR. TAYLOR:</p>

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<p style="text-align: right;">Page 74</p> <p>1 Q. Do you agree that tire size or fitment can also 2 affect vehicle handling? 3 A. Yes. 4 Q. Had you been unable to -- Strike that. Had you 5 been able to inspect the vehicle, you would 6 have been able to investigate the condition and 7 fitment of the pickup's ball hitch and trailer 8 coupler, is that right? 9 A. Yes. I could have done that as a 10 possibility. 11 Q. You agree that an improper connection between 12 the pickup and trailer could degrade vehicle 13 handling? 14 A. I don't envision how that would, so I'd say 15 it's a possibility, but I don't see how it's 16 going to be likely. 17 Q. Okay. Well, let's investigate that a little 18 bit further. Do you understand or know about 19 the concept of dynamic oscillation? 20 A. Yes. 21 Q. What is that? 22 A. Well, it can be used in a number of terms. 23 Q. With regard to a trailer? 24 A. If you're talking about with regard to a 25 vehicle being pulled -- pulling a trailer and</p>	<p style="text-align: right;">Page 76</p> <p>1 towed. 2 There are many variables there. Would 3 not necessarily be dynamic instability, but 4 dynamic instability could occur. 5 Q. Was there a difference between dynamic 6 instability and divergent instability? 7 A. I'm not familiar with the term divergent 8 instability. 9 Q. Okay. Some of the things that you mentioned 10 that this instability can be caused from are a 11 vehicle that's too small to be pulling what 12 it's pulling, correct? 13 A. Correct. 14 Q. A trailer that's too small to be hauling what 15 it's hauling; is that an accurate way -- 16 A. Well, I've had two actually. I've had a 17 trailer that was so small and had a large 18 tractor on it. So I suppose that could be. 19 It's usually the trailer is too large 20 for the vehicle doing the towing. 21 Q. Gotcha. Okay. 22 And then what about the braking 23 condition; that could be a vehicle condition or 24 a trailer condition? 25 A. Correct.</p>
<p style="text-align: right;">Page 75</p> <p>1 some -- and I have analyzed cases with some 2 improper loading, overloading, insufficient 3 trailer hitch download, you can get a 4 situation -- or when wind or trailers driven by 5 semis go by, that the trailer can start to go 6 back and forth relative to the vehicle ahead of 7 it or doing the towing. That would be a 8 dynamic. It's in motion. 9 And the scientific term would be some 10 oscillation, movement side to side. 11 Q. Is that a result of dynamic instability? 12 A. Well, that's a bigger general term. 13 Q. Of the truck? 14 A. As a result, it can be a result of many 15 different things that I've seen over the years, 16 and if you want to go into those we can, but it 17 happens when the towing vehicle is too small, 18 the vehicle being towed is too large. 19 Q. Uh-huh. 20 A. It can happen if there's an insufficient tongue 21 weight or too much tongue weight. It can 22 happen based upon the conditions of the roadway 23 surface, slippery roadway surface. It can 24 happen based upon the braking condition of not 25 only the towing vehicle but the vehicle being</p>	<p style="text-align: right;">Page 77</p> <p>1 Q. Did the trailer in this particular case have 2 brakes on it? 3 A. No. 4 Q. And I noticed in one of your files there that 5 you included a printout with regard to a 6 certain trailer, it's your vehicle 7 specifications folder, and we can mark this -- 8 well, we can mark this entire folder as 9 Exhibit 38 just to put it on the record. 10 (Exhibit 38 marked for 11 identification.) 12 Q. Within Exhibit 38, there's SK0080, which is the 13 Trailerman 2015 76-by-10 utility trailer with 14 gate, is that right? 15 A. Yes. 16 Q. Is that your understanding that that was the 17 trailer that was involved in this accident? 18 A. Or similar trailer, yes. I can't say it's the 19 exact same trailer. 20 Q. By what means did you come up with the 21 information that this was the -- a similar 22 trailer to what was being used that day? 23 A. I didn't come up with the information. That's 24 Mr. Peterson or Mr. Zuelhke. I didn't make 25 that analysis.</p>

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<p style="text-align: right;">Page 78</p> <p>1 Q. Did anyone from your office ever inspect the</p> <p>2 trailer that was involved in this accident?</p> <p>3 A. Nope.</p> <p>4 Q. Do you know what information they were using to</p> <p>5 base the assessment that this particular</p> <p>6 Trailerman trailer was a similar trailer to</p> <p>7 what was being pulled the day of the</p> <p>8 accident?</p> <p>9 A. The police photographs show -- showing the</p> <p>10 trailer, and then comparing it to what is shown</p> <p>11 on SK0080, mainly to have measurements to show</p> <p>12 the trailer and pickup truck on the diagram.</p> <p>13 Q. Anything else?</p> <p>14 A. No.</p> <p>15 Q. Do you know how the ATVs were configured on the</p> <p>16 trailer on the date of the accident?</p> <p>17 A. I have an understanding that they were both</p> <p>18 loaded one forward and one rearward, one</p> <p>19 perpendicular to the other. But I didn't see</p> <p>20 them the way they were loaded before the</p> <p>21 accident.</p> <p>22 Q. How did you come to that understanding?</p> <p>23 A. From reviewing the police photographs, if I</p> <p>24 recall properly, and then there was some</p> <p>25 indication about the size of the ATVs and the</p>	<p style="text-align: right;">Page 80</p> <p>1 tire and inside of the fenders?</p> <p>2 Q. No, sir.</p> <p>3 A. Possible.</p> <p>4 Q. You could have, I'm assuming, right?</p> <p>5 A. Yes.</p> <p>6 Q. But really what I was talking about is, had you</p> <p>7 been able to do that, you could have seen if</p> <p>8 there was any interaction between the</p> <p>9 separating tread and top belt from the subject</p> <p>10 tire and the wheel well or other vehicle</p> <p>11 components?</p> <p>12 A. I understand. Yes.</p> <p>13 Q. And do you have an understanding as to why that</p> <p>14 would be important in a tire failure case?</p> <p>15 A. No, I don't.</p> <p>16 Q. Had you been able to inspect the vehicle, one</p> <p>17 of the things you could have inspected was the</p> <p>18 brake light filaments, is that right?</p> <p>19 A. Yes.</p> <p>20 Q. And do you agree that the brake light filaments</p> <p>21 could offer further evidence of the driver's</p> <p>22 braking inputs during this accident?</p> <p>23 A. In this case, probably not.</p> <p>24 Q. Why do you hold that opinion?</p> <p>25 A. Because the deceleration rate isn't sufficient</p>
<p style="text-align: right;">Page 79</p> <p>1 size of the trailer. I would say that was my</p> <p>2 preliminary determination.</p> <p>3 Q. There's a file folder that we marked as the</p> <p>4 police -- with the police report and the police</p> <p>5 photographs. I was just wondering if you could</p> <p>6 look at those for me and tell me which of those</p> <p>7 pictures might have led you to the conclusion</p> <p>8 that the ATVs were loaded in that manner on the</p> <p>9 date of the accident.</p> <p>10 A. Well, first of all, we didn't mark it, but</p> <p>11 SK013 and 14 shows the trailer and its general</p> <p>12 configuration, shows the ATVs out of it, and I</p> <p>13 could see that two ATVs wouldn't fight side by</p> <p>14 side.</p> <p>15 So it's my opinion that one was</p> <p>16 probably perpendicular to the other.</p> <p>17 Q. Okay. Had you been able to actually inspect</p> <p>18 the subject vehicle, you would have been able</p> <p>19 to investigate the interaction between the</p> <p>20 tire's tread and the wheel well or other</p> <p>21 vehicle components, correct?</p> <p>22 A. The tire tread and the wheel well?</p> <p>23 Q. Yes, sir.</p> <p>24 A. You're talking about could I have measured the</p> <p>25 clearance between the outside surface of the</p>	<p style="text-align: right;">Page 81</p> <p>1 to cause filament deformation, if the filaments</p> <p>2 are hot, and also taillight filaments many</p> <p>3 times have cold deformation.</p> <p>4 Q. Cold deformation?</p> <p>5 A. Yes. The filaments, as they get older, they</p> <p>6 tend to sag.</p> <p>7 Q. So inspecting the brake light filaments would</p> <p>8 not have been something that you would have</p> <p>9 wanted to do on the vehicle?</p> <p>10 A. Well, I would have wanted to do it to answer</p> <p>11 your question, but I wouldn't have done it if I</p> <p>12 had been inspecting the vehicle.</p> <p>13 Q. Had you been able to inspect the subject</p> <p>14 vehicle, you could have looked for any</p> <p>15 preexisting damage to the vehicle, right?</p> <p>16 A. Yes.</p> <p>17 Q. Had you been able to inspect the subject</p> <p>18 vehicle, you might have been able to download</p> <p>19 the EDR data from the pickup truck, right?</p> <p>20 A. Yes.</p> <p>21 Q. And you're aware that GMC was capable of</p> <p>22 storing accident data, including vehicle speed</p> <p>23 and seat belt status, right?</p> <p>24 A. I'm not sure in 2005 they had speed as a direct</p> <p>25 output, but they would have seat belt use as</p>

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<p style="text-align: right;">Page 82</p> <p>1 input -- or as output.</p> <p>2 Q. Had you been able to investigate or inspect the</p> <p>3 subject vehicle, you could have looked at the</p> <p>4 scratch patterns on it, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And the scratch patterns can be indicative of</p> <p>7 the number of rolls and the angle of those</p> <p>8 rolls, is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. And you think there were two and a half rolls</p> <p>11 in this accident?</p> <p>12 A. That's my opinion, yes.</p> <p>13 Q. Okay. And passenger loading?</p> <p>14 A. Yes.</p> <p>15 Q. Other than the information you've already</p> <p>16 talked about with regard to Exhibit 38, do you</p> <p>17 know the actual size of the subject trailer, or</p> <p>18 its dimensions?</p> <p>19 A. No. I didn't inspect and measure the accident</p> <p>20 trailer.</p> <p>21 Q. Did you make any assumptions as to how much</p> <p>22 that trailer weighed?</p> <p>23 A. No.</p> <p>24 Q. No assumptions on how much it weighed?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 84</p> <p>1 camper is higher than the center of gravity</p> <p>2 of the truck without the camper, so you'd</p> <p>3 raise the center of gravity of the truck</p> <p>4 somewhat.</p> <p>5 Q. Does a raised center of gravity increase a</p> <p>6 vehicle's propensity to roll over?</p> <p>7 A. All things being equal, yes.</p> <p>8 Q. Did you do any analysis of how the axle weights</p> <p>9 on the truck were altered due to the hitch</p> <p>10 weight?</p> <p>11 A. Altered from what?</p> <p>12 Q. Curb weight?</p> <p>13 A. Okay. No. I haven't studied the loading on</p> <p>14 each of the axles of the truck, nor on the</p> <p>15 trailer.</p> <p>16 Q. Did you develop any sort of opinion as to --</p> <p>17 Strike that. Do you know what the vehicle's</p> <p>18 gross vehicle weight rating was?</p> <p>19 A. From the serial number, and that's on SK0079</p> <p>20 contained in Exhibit 38, the letter H in the</p> <p>21 serial number indicates 9,001 pounds to 10,000</p> <p>22 pounds GVWR. So that's the gross vehicle</p> <p>23 weight rating.</p> <p>24 Q. So 9,000 to 10,000?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 83</p> <p>1 Q. Did you make any sort of determination as to</p> <p>2 how much the ATVs that were being hauled that</p> <p>3 day weighed?</p> <p>4 A. No.</p> <p>5 Q. Did you do any analysis to determine how much</p> <p>6 the cooler that was being hauled in the trailer</p> <p>7 may have weighed that day?</p> <p>8 A. No.</p> <p>9 Q. Did you do any sort of analysis of how much</p> <p>10 weight the loaded trailer would have imparted</p> <p>11 to the pickup's hitch?</p> <p>12 A. No.</p> <p>13 Q. Did you do any determination as to how much the</p> <p>14 camper weighed?</p> <p>15 A. No.</p> <p>16 Q. Did you make any determination as to how the</p> <p>17 camper would have affected the center of</p> <p>18 gravity of the vehicle?</p> <p>19 A. I didn't study it, but I have an opinion.</p> <p>20 Q. What's that opinion?</p> <p>21 A. It would raise the center of gravity of the</p> <p>22 truck as a total assembly.</p> <p>23 Q. Why?</p> <p>24 A. Because when you put a camper on the back,</p> <p>25 you're -- the center of gravity of the</p>	<p style="text-align: right;">Page 85</p> <p>1 Q. Is there a gross axle weight rating in there?</p> <p>2 A. Not that I see, no.</p> <p>3 Q. Do you know what the gross axle weight rating</p> <p>4 was for each of the axles on this particular</p> <p>5 vehicle?</p> <p>6 A. Contained on Exhibit -- or in Exhibit 38, make</p> <p>7 reference to Expert AutoStats, SK0081, it says</p> <p>8 that the -- gives a curb weight at 5,485, and</p> <p>9 it gives a gross vehicle weight of 9,200, and</p> <p>10 it talks about a curb weight distribution of 60</p> <p>11 percent on the front axle, and 40 percent on</p> <p>12 the rear axle. So one would have to do the</p> <p>13 multiplication to get the axle load.</p> <p>14 Q. So the rear axle gross axle weight rating would</p> <p>15 be 40 percent of 9,200?</p> <p>16 A. No. That's the curb weight distribution. It</p> <p>17 doesn't say rating per se in any of the</p> <p>18 documents that I have.</p> <p>19 Q. Okay. So can you tell us again what the gross</p> <p>20 axle weight rating was for the rear or the</p> <p>21 front axle on this vehicle?</p> <p>22 A. No.</p> <p>23 Q. In that -- Those stats that you have in front</p> <p>24 of you, there's -- the pickup's track width is</p> <p>25 also in there, is that correct?</p>

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<p style="text-align: right;">Page 86</p> <p>1 A. Yes.</p> <p>2 Q. And it looks like that you come up with 64</p> <p>3 inches for the front and 65 inches for the</p> <p>4 rear, is that correct?</p> <p>5 A. Correct.</p> <p>6 Q. Do you believe that a vehicle's track widths</p> <p>7 are important to analyzing its lateral</p> <p>8 acceleration capabilities?</p> <p>9 A. It could be one of the factors of many factors</p> <p>10 involved.</p> <p>11 Q. Was there any other reason why the track width</p> <p>12 of the vehicle was important for your analysis?</p> <p>13 A. It wasn't important for my analysis, but we</p> <p>14 used the specifications to make the model truck</p> <p>15 for the drawing.</p> <p>16 Q. Well, could the vehicle's track width have a</p> <p>17 bearing on how the vehicle might respond to a</p> <p>18 tire disablement?</p> <p>19 A. In theory. It's possible, I expect.</p> <p>20 Q. Have you done any sort of analysis of the</p> <p>21 literature and testing related to tire failures</p> <p>22 and how they affect vehicle handling?</p> <p>23 A. For purposes of this case, I saw</p> <p>24 Mr. Beauchamp's report, and he had a number of</p> <p>25 articles. I independently for purposes of this</p>	<p style="text-align: right;">Page 88</p> <p>1 A. No.</p> <p>2 Q. Let's go back to the camper trailer for just a</p> <p>3 minute.</p> <p>4 A. Excuse me. It wasn't a camper trailer. It was</p> <p>5 a camper insert on the pickup and then a</p> <p>6 trailer on the back.</p> <p>7 Q. Fair enough.</p> <p>8 A. And I'm sure you know the difference, but</p> <p>9 probably misspoke.</p> <p>10 Q. I did misspeak. Sorry.</p> <p>11 This vehicle was hauling a trailer</p> <p>12 that had two ATVs on it, correct?</p> <p>13 A. Yes.</p> <p>14 Q. In addition to that, it had a pop-up camper</p> <p>15 in the bed of the pickup slid in there,</p> <p>16 correct?</p> <p>17 A. A camper insert, yes.</p> <p>18 Q. Do you know what was contained inside that</p> <p>19 camper insert?</p> <p>20 A. I understood some testimony by the passenger</p> <p>21 that there were supplies for them going and</p> <p>22 staying overnight, but I don't know the details</p> <p>23 of what those contents were.</p> <p>24 Q. Sure. And he testified that he didn't actually</p> <p>25 help load it, correct?</p>
<p style="text-align: right;">Page 87</p> <p>1 case made no such study.</p> <p>2 The topic has arisen in prior cases,</p> <p>3 however, but I don't remember the context,</p> <p>4 whether I was -- most of the time I reconstruct</p> <p>5 the accident. Other people talk about the</p> <p>6 tires.</p> <p>7 Q. Okay. And I guess this is sort of where we'll</p> <p>8 get down to brass tacks here in your testimony.</p> <p>9 Do you intend to offer opinions as to how and</p> <p>10 why the vehicle moved in the manner in which it</p> <p>11 did following the tire failure?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Would you consider that the field of</p> <p>14 vehicle dynamics?</p> <p>15 A. It would be part of vehicle dynamics, I would</p> <p>16 say, but here we have testimony of what the</p> <p>17 vehicle did, or witness observations of what</p> <p>18 the vehicle did. We have the tracks and the</p> <p>19 path. I have that on my drawing, what the</p> <p>20 vehicle actually did.</p> <p>21 Q. Okay. But just in terms of your opinions in</p> <p>22 this case, have you done any type of research</p> <p>23 or analysis of other people's research related</p> <p>24 to the effect that a tire failure may have on a</p> <p>25 vehicle traveling at highway speeds?</p>	<p style="text-align: right;">Page 89</p> <p>1 A. Correct.</p> <p>2 Q. So he wasn't exactly familiar with what was in</p> <p>3 the camper, correct?</p> <p>4 A. Correct.</p> <p>5 Q. Do you intend to offer any opinions in this</p> <p>6 case with regard to how much load there was on</p> <p>7 the axles of this vehicle at the time of the</p> <p>8 accident?</p> <p>9 A. Not without further information, no, I do</p> <p>10 not.</p> <p>11 Q. Did you do any investigation to determine the</p> <p>12 year, make or model of that slide-in camper?</p> <p>13 A. No.</p> <p>14 Q. Do you have an opinion as to how much that</p> <p>15 slide-in camper weighed?</p> <p>16 A. No.</p> <p>17 Q. Do you have an opinion as to how the weight</p> <p>18 distribution on the vehicle on the date of this</p> <p>19 accident may have affected the pickup's</p> <p>20 response to a tire disablement?</p> <p>21 A. No.</p> <p>22 Q. I noticed in your information that you</p> <p>23 inspected the subject tire?</p> <p>24 A. Yes, I did.</p> <p>25 Q. Was that you personally?</p>

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<p style="text-align: right;">Page 90</p> <p>1 A. Yes. Well, Mr. Peterson did, but I also did, 2 and if you look at the inspection notes 3 contained in Exhibit 35, you'll find SK0143 4 which are my notes of September 22nd, 2015 when 5 I inspected the subject tire. 6 Q. What date was that? 7 A. September 22nd, 2015. 8 Q. Did you just inspect it that one time? 9 A. It was at our office. I wouldn't rule out 10 looking at it the day before or several days 11 later. 12 Q. Sure. 13 A. But September 22nd is when I made the notes. 14 Q. And a number of photographs were taken of the 15 subject tire and the tread piece, is that 16 right? 17 A. Yes. 18 Q. Were those taken by you or Mr. Peterson? 19 A. I took the photographs of September 22nd, 2015. 20 He may have taken others at another time. 21 Q. Was there anything in particular about your 22 inspection of the subject tire that affected 23 your opinions in this case? 24 A. No. 25 Q. Was there anything that you found on the</p>	<p style="text-align: right;">Page 92</p> <p>1 original equipment, and I don't want to 2 misquote you, but do you recall me asking you 3 those questions? 4 A. I do. And I indicated that certainly the 5 trailer and certainly the camper were not 6 original equipment. 7 Q. Sure. Were the wheels that were inspected by 8 your office original General Motors equipment 9 that came with this vehicle? 10 A. I don't know that to be a fact one way or the 11 other. 12 Q. Do you know if the tire was the original 13 equipment tire that came with this vehicle? 14 A. No. I don't know one way or the other. 15 Q. Do you know if the tire that you inspected that 16 was on the right rear of this vehicle on the 17 date of the accident was a size recommended by 18 General Motors for that vehicle? 19 A. I made no such study, so I don't know one way 20 or the other. 21 Q. Just to be clear, you're not going to offer any 22 opinions with regard to how or why the subject 23 tire failed, is that correct? 24 A. Beyond the general, I understand there's a 25 tread separation. Details? No. That's not my</p>
<p style="text-align: right;">Page 91</p> <p>1 subject tire that you believe validates or 2 supports any of the opinions that you intend to 3 offer in this case? 4 A. Not beyond the fact that the tire had failed, 5 and I was preserving the condition of the tire 6 when we had it, and we know the tire failed at 7 the time of the accident. 8 Q. And the reason I'm asking, there seem to be a 9 large number of pictures of the tire. I just 10 want to make sure, is there anything in 11 particular that you photographed on the tire 12 that you believe was indicative of a trait that 13 you want to share with the jury that supports 14 your opinions or lends credence to your 15 opinions? 16 A. Not only there's a tread separation, there was 17 a piece separated from the carcass of the tire. 18 But no. Nothing else. 19 Q. You also inspected the wheels from the vehicle, 20 is that right? 21 A. I did not. Mr. Peterson did. 22 Q. You personally did not inspect the wheels? 23 A. Not that I recall, no. 24 Q. You had indicated earlier that you were unaware 25 of any portion of the vehicle that was not</p>	<p style="text-align: right;">Page 93</p> <p>1 area. 2 Q. Do you believe that the tire lost its air 3 pressure while the vehicle was still on the 4 paved surface? 5 A. Yes. 6 Q. What's the basis of that opinion? 7 A. Well, there are a number of bases. First of 8 all, we have witness testimony that were 9 following. Then the piece of the tire was 10 found before and up the road from where the 11 tire marks go off into the median. Certainly 12 the vehicle lost control in my opinion as a 13 result of the tire failure. 14 So those would be sufficient 15 reasons. 16 Q. And again, just to be very specific, I was 17 really just talking about the fact that the 18 air-out occurred on the roadway. Is there 19 anything in particular in your investigation 20 that you're relying upon that shows that the 21 tire lost its air while the vehicle was still 22 on the roadway? 23 A. I'm not sure I understand. You're talking 24 about some mark on the roadway? 25 Q. Anything?</p>

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<p style="text-align: right;">Page 94</p> <p>1 A. Oh, I'm not aware of a physical mark on the 2 roadway that I've seen that shows the -- let's 3 say the rim down to the pavement, if that's the 4 question. 5 Q. It's part of the question. It could be part of 6 the evidence. I don't know. I was asking you 7 a very open question. Is there anything about 8 your investigation, whether it be the wheel, 9 the tire, the scene, that tells you that the 10 vehicle lost -- strike that, that the tire 11 lost its air pressure while still on the 12 roadway? 13 A. And again, you could have a tread separation as 14 I'm understanding the question where there's 15 still air in the tire. 16 Q. Absolutely. 17 A. I don't have physical facts one way or the 18 other on that aspect. 19 Q. Okay. In your years of offering testimony with 20 regard to consumer products, can you agree with 21 this statement; the mere fact that a product 22 fails does not necessarily mean that it's 23 defective? 24 A. I agree. 25 Q. Would you look at Exhibit 26, your report for</p>	<p style="text-align: right;">Page 96</p> <p>1 open question that might lead you to offering 2 something new? 3 A. Yes, understanding what my assignment was. 4 Q. Uh-huh. 5 A. Yes, understanding what the questions were that 6 were going to be asked of me by Mr. Rottier or 7 someone in his office. 8 So yes. All of my opinions are 9 contained in Exhibit 26 with, as you just 10 stated, the exception if there's some question 11 that I hadn't anticipated that you might ask 12 that I wouldn't have covered in the report. 13 Q. Great. So you stand by your report? 14 A. Absolutely. 15 Q. It's complete? 16 A. Yes. 17 Q. And it was -- Strike that. Did you have any -- 18 Did you need to review anything else prior to 19 your February 29th, 2016 report? 20 A. Other than anything else I had -- 21 Q. Was there anything else that you needed to 22 review prior to issuing this report? 23 A. No. 24 Q. Okay. Have you asked -- been -- Strike that. 25 Have you been asked to do anything else since</p>
<p style="text-align: right;">Page 95</p> <p>1 me, please, sir? 2 A. I have it in front of me. 3 Q. Great. Are there any drafts of this report? 4 A. No. But I would tell you that when I dictate 5 the report and it's typed up by Mary Stoflet, I 6 proofread it and use a red pen or whatever, or 7 make corrections on the computer. I sometimes 8 do it that way. 9 So this should be the final product, 10 but there would probably have been in the Word 11 program that we use some original probably 12 typos, et cetera, in that original draft. 13 Q. Did you save those other drafts? 14 A. No. 15 Q. In between your original dictation and this 16 final report, did you have any conversations 17 with anyone representing Mr. Below about your 18 opinions that you intended to express? 19 A. No. 20 Q. Did you supply the report to them for review 21 prior to finalizing it? 22 A. No. 23 Q. Does this report contain a complete statement 24 of all of the opinions that you intend to offer 25 in this case, without me asking you some big</p>	<p style="text-align: right;">Page 97</p> <p>1 you issued your report in February of 2016? 2 A. Yes. 3 Q. What else have you been asked to do? 4 A. I received the statement, the two depositions, 5 and the exhibits attached to them. Although 6 I wasn't asked to read those materials, I did 7 so, and I also received Mr. Beauchamp's 8 materials. 9 And again, although I wasn't asked, I 10 did review those. 11 Q. Anything else? 12 A. No. 13 Q. Did Mr. Peterson contribute to this report? 14 Bless you. 15 A. No. But please understand, Mr. Peterson 16 assisted me in the inspection, and you can see 17 in the billing Mr. Zuelhke and Mr. Bingen 18 helped with the drawing, all of that sort of 19 information. 20 But I wrote the report. These are my 21 words. No one else. 22 Q. Great. You wrote it word for word? 23 A. Yes. 24 Q. That was really the better question. 25 A. You're welcome.</p>

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<p style="text-align: right;">Page 98</p> <p>1 Q. Are you doing okay, or do you want a break?</p> <p>2 A. I'm fine.</p> <p>3 Q. Okay. Me too. Everybody else?</p> <p>4 We're going to talk about Exhibit 36,</p> <p>5 which is your diagram of the accident, okay?</p> <p>6 A. Yes.</p> <p>7 Q. Do you have a smaller version of this that you</p> <p>8 can look on with?</p> <p>9 A. I do. It was attached to the report. It's</p> <p>10 SK0077, which is part of Exhibit 26, although</p> <p>11 it's kind of a small scale for my old eyes.</p> <p>12 But I'll work with it.</p> <p>13 Q. Well, you're welcome to look at 36 at any point</p> <p>14 in time. I need to understand better some of</p> <p>15 the markings that are on Exhibit 36, and let's</p> <p>16 basically start from the top of the page and</p> <p>17 work our way down, okay?</p> <p>18 A. Yes.</p> <p>19 Q. The first thing that we come to that is part of</p> <p>20 the diagram is a dotted line or dashed line.</p> <p>21 What is that?</p> <p>22 A. The gravel shoulder edge.</p> <p>23 Q. Uh-huh. Do you have any indication in your</p> <p>24 notes how far the roadway drops off from the</p> <p>25 edge of that gravel to the unimproved area of</p>	<p style="text-align: right;">Page 100</p> <p>1 configured in that manner?</p> <p>2 A. Yes. Because we studied the dashed lines</p> <p>3 through the area of the accident, and didn't</p> <p>4 place them all on the drawing further down the</p> <p>5 road nor in the other lanes. We put what's</p> <p>6 traditionally a center line marking, which is a</p> <p>7 long line with a small dash.</p> <p>8 Q. The next line that we come to is what?</p> <p>9 A. That's the west edge of the paved portion of</p> <p>10 the through lanes.</p> <p>11 Q. That's the yellow line?</p> <p>12 A. Yes.</p> <p>13 Q. And then what's after the yellow line?</p> <p>14 A. Then you have the edge of the paved surface,</p> <p>15 which is the shoulder.</p> <p>16 Q. Okay.</p> <p>17 A. And then you have the dashed line, which is the</p> <p>18 edge of the gravel shoulder.</p> <p>19 Q. And then we have the center median, is that</p> <p>20 right?</p> <p>21 A. Yes. It's just grass.</p> <p>22 Q. All right. There's some photographs here that</p> <p>23 someone has placed on Exhibit 36. First off,</p> <p>24 who did Exhibit 36?</p> <p>25 A. That's a combination of Mr. Peterson,</p>
<p style="text-align: right;">Page 99</p> <p>1 the roadway?</p> <p>2 A. Not that I recall. It's not much of a dropoff,</p> <p>3 but I don't recall what it is.</p> <p>4 Q. Is it severe?</p> <p>5 A. No.</p> <p>6 Q. Okay. So you have a graveled area, and then</p> <p>7 what's the next line that we see there, that</p> <p>8 solid black line?</p> <p>9 A. That's the edge of the paved shoulder.</p> <p>10 Q. And then the next double line there?</p> <p>11 A. That's the -- I'll call it the fog line, or the</p> <p>12 right side line for -- that stage vehicles</p> <p>13 northbound. It would be the east edge of the</p> <p>14 through lines.</p> <p>15 Q. It's called the fog line, you say?</p> <p>16 A. We sometimes call it that, yes.</p> <p>17 Q. Is that a white line typically?</p> <p>18 A. Yes.</p> <p>19 Q. What's the next set of lines?</p> <p>20 A. That represents the center line of the two</p> <p>21 divided northbound lanes.</p> <p>22 Q. And I'm having difficulty understanding.</p> <p>23 There's a -- appears to be almost a solid line,</p> <p>24 and then there's some dashes underneath that</p> <p>25 partial solid line. Do you know why it was</p>	<p style="text-align: right;">Page 101</p> <p>1 Mr. Zuelhke, Mr. Bingen and myself.</p> <p>2 Q. Who decided where to place the photographs?</p> <p>3 A. I would say Mr. Peterson probably put the</p> <p>4 photographs.</p> <p>5 Q. Did he do some photogrammetry on this?</p> <p>6 A. Not on those photographs, but yes, on larger</p> <p>7 photographs that are in the file. You remember</p> <p>8 we -- that Mr. Peterson measured the rumble</p> <p>9 strips?</p> <p>10 Q. Uh-huh.</p> <p>11 A. And then the dashed lines, and you'll find</p> <p>12 photographs which we already marked where</p> <p>13 Mr. Peterson made some study to help place the</p> <p>14 tire marks on the drawing, Exhibit 36.</p> <p>15 Q. The -- Going from right to left, the first</p> <p>16 photograph, which would be the way Mr. Below</p> <p>17 was headed that day, the first photograph we</p> <p>18 come to is scene photograph P9, is that right?</p> <p>19 A. Yes.</p> <p>20 Q. And that shows a piece of tread at the road</p> <p>21 edge, is that right?</p> <p>22 A. Yes.</p> <p>23 Q. And Mr. Below was headed westbound, right, on</p> <p>24 94 that day?</p> <p>25 A. Correct. Although please understand, at that</p>

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<p>1 location it's basically north.</p> <p>2 Q. Basically north/south at that point?</p> <p>3 A. Right. But we always call it westbound on the</p> <p>4 interstate there, throughout that travel.</p> <p>5 Q. We got a lot of that on I-10 going through</p> <p>6 Texas too, so I'll forgive you. Can we just</p> <p>7 call it eastbound and westbound just for --</p> <p>8 because that's how the roadway is named?</p> <p>9 A. That's fine.</p> <p>10 Q. But we'll understand he's going north/south.</p> <p>11 A. I got it.</p> <p>12 Q. Okay. So he's heading westbound on 94, and so</p> <p>13 we're looking at scene photograph P9, and</p> <p>14 that's looking in the direction of westbound</p> <p>15 94, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know if that's the piece of tread that</p> <p>18 was recovered that related to the subject tire?</p> <p>19 A. Yes.</p> <p>20 Q. How do you know that?</p> <p>21 A. By looking at the photographs and studying the</p> <p>22 piece of tire.</p> <p>23 Q. The next photograph is scene photograph P11?</p> <p>24 A. Yes.</p> <p>25 Q. What was used to orient it to place it at that</p>	<p>1 truck.</p> <p>2 Q. Do you believe that Mr. Below was traveling in</p> <p>3 the right-hand or the slow lane when the tire</p> <p>4 began to fail?</p> <p>5 A. That's my opinion, yes.</p> <p>6 Q. How do you define yaw? Yaw, y-a-w.</p> <p>7 A. It's a motion made by the vehicle, and if you</p> <p>8 want it in engineering terms, but in layman's</p> <p>9 terms basically a vehicle going straight</p> <p>10 doesn't yaw, but if it starts to rotate without</p> <p>11 it being turned specifically by the steering</p> <p>12 wheel, then the vehicle starts to travel down</p> <p>13 the road in varying degrees of in this case</p> <p>14 right-side leading.</p> <p>15 This vehicle is clearly yawing from</p> <p>16 its tire marks and its rotation through the</p> <p>17 area where it rolls and to where it comes to</p> <p>18 rest.</p> <p>19 Q. So your definition of yaw is a motion made by a</p> <p>20 vehicle where it rotates without being turned</p> <p>21 by the steering wheel, is that --</p> <p>22 A. It can be turned by the steering wheel and</p> <p>23 steering of the vehicle too. It's a rotation</p> <p>24 about the -- if you have a vertical axis</p> <p>25 through the center of gravity, it's rotation of</p>
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<p>1 particular spot?</p> <p>2 A. The dashed center lines, the police</p> <p>3 photographs, the rumble strips.</p> <p>4 And by the way, the arrows show on the</p> <p>5 right-hand side, but of course those</p> <p>6 photographs are taken on the left-hand side of</p> <p>7 the westbound lanes. There just wasn't room to</p> <p>8 put them -- to put them in the median.</p> <p>9 Q. Sure. Disturb everything else.</p> <p>10 The next photograph we come to is</p> <p>11 scene photograph P12, which is you can begin to</p> <p>12 see some tire marks going across the solid</p> <p>13 yellow line, is that right?</p> <p>14 A. Yes.</p> <p>15 Q. In any of those tire marks -- Strike that. Did</p> <p>16 you determine the marks that we see in scene</p> <p>17 photograph P12 to be tire marks that were left</p> <p>18 from the subject vehicle or the subject</p> <p>19 vehicle's trailer?</p> <p>20 A. The subject vehicle. Not so much the</p> <p>21 trailer.</p> <p>22 Q. How did you make that determination?</p> <p>23 A. Because you could trace the tire marks from the</p> <p>24 pickup truck rather than the tire marks from</p> <p>25 the trailer through the area of travel of the</p>	<p>1 the vehicle around that vertical axis as it's</p> <p>2 in transition.</p> <p>3 Q. Can a vehicle recover from a yaw in your</p> <p>4 opinion, or your -- using your definition of</p> <p>5 yaw, can a vehicle recover from a yaw?</p> <p>6 A. A small yaw, yes. When it gets to any kind of</p> <p>7 yaw like this, no.</p> <p>8 Q. When you say this, you're talking about the</p> <p>9 first image that we see of the Below vehicle on</p> <p>10 your diagram?</p> <p>11 A. Yes.</p> <p>12 Q. Is it your opinion that the image that we see</p> <p>13 there at the -- the first image that we see of</p> <p>14 the Below vehicle, that vehicle is in a yaw at</p> <p>15 that point?</p> <p>16 A. Yes.</p> <p>17 Q. Is that a yaw from which that vehicle could</p> <p>18 have recovered at that point?</p> <p>19 A. I doubt it. I'd say no.</p> <p>20 Q. Does the placement of the first vehicle on</p> <p>21 Exhibit 36 and your diagram, is that an</p> <p>22 indication of where the first physical evidence</p> <p>23 was found on the actual roadway?</p> <p>24 A. The tire mark, yes,</p> <p>25 Q. Which tire mark was first located there?</p>

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<p style="text-align: right;">Page 106</p> <p>1 A. The right front.</p> <p>2 Q. And we see that carrying all the way through</p> <p>3 into the median area, is that right?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. How far back from point of rest is that</p> <p>6 first tire mark? Well, let's strike that.</p> <p>7 Let's start with the trip. How far back from</p> <p>8 the trip is that first tire mark?</p> <p>9 A. Well, you could measure it on the drawing is</p> <p>10 the easiest, but in the calculations, that</p> <p>11 would be location H, and we start as</p> <p>12 location A.</p> <p>13 Q. Where is A?</p> <p>14 A. A is the first drawing you just referenced.</p> <p>15 It's the easternmost portrayal.</p> <p>16 Q. Okay. So it's position A is the --</p> <p>17 A. Yes.</p> <p>18 Q. The first time in his lane of travel that we</p> <p>19 see him, right?</p> <p>20 A. Correct.</p> <p>21 Q. Okay.</p> <p>22 A. So if we add the distance up, and you want to</p> <p>23 go all the way to H?</p> <p>24 Q. Let's go to trip. Yeah. Is it H?</p> <p>25 A. It's about 161 feet.</p>	<p style="text-align: right;">Page 108</p> <p>1 those to the distances traveled.</p> <p>2 Q. Sure.</p> <p>3 A. Conservation of kinetic energy. It's not a</p> <p>4 critical speed calculation.</p> <p>5 Q. Is there anything wrong with the critical speed</p> <p>6 calculation?</p> <p>7 A. Depends how it's used and what it's used. If</p> <p>8 it's --</p> <p>9 Q. How about in this arena?</p> <p>10 A. In this case, no, you wouldn't use critical</p> <p>11 speed calculation.</p> <p>12 And critical speed, make sure we're on</p> <p>13 the same path or on the same page here, it</p> <p>14 talks about if you have tire marks created by a</p> <p>15 vehicle going around a curve, if you can</p> <p>16 measure the core or the radius of the</p> <p>17 cornering, you could then calculate the maximum</p> <p>18 speed if you take into account lateral</p> <p>19 acceleration limits.</p> <p>20 Is that what you're talking about?</p> <p>21 Q. I am.</p> <p>22 A. I hope so.</p> <p>23 Q. Did you do any sort of analysis of the lateral</p> <p>24 acceleration limits on this particular</p> <p>25 vehicle?</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. How long do you have his roll distance, 164,</p> <p>2 something like that, 124?</p> <p>3 A. 124, correct.</p> <p>4 Q. 124 roll distance?</p> <p>5 A. Yes. To final rest, yes.</p> <p>6 Q. Did you do a speed calculation for Mr. Below's</p> <p>7 pickup truck at point A on Exhibit 36?</p> <p>8 A. At location A, yes.</p> <p>9 Q. What did you determine his speed to be at</p> <p>10 location A?</p> <p>11 A. That's the speed I reported in my report,</p> <p>12 Exhibit 26, at 58 to 63 miles per hour.</p> <p>13 THE VIDEOGRAPHER: About five minutes</p> <p>14 left on disk.</p> <p>15 MR. TAYLOR:</p> <p>16 Q. Okay. What type of speed calculation did you</p> <p>17 use; did you use a segment of yaw calculation,</p> <p>18 did you use like a source of critical speed</p> <p>19 calculation? How did you do your speeds?</p> <p>20 A. Didn't use critical speed. But I used</p> <p>21 conservation of kinetic energy, and as you just</p> <p>22 said, broke it up into increments and used</p> <p>23 acceleration, and then took into account that</p> <p>24 it's yawing at an increasing rate, and then</p> <p>25 used the rates of deceleration and applied</p>	<p style="text-align: right;">Page 109</p> <p>1 A. Well, yes. There's lateral acceleration as the</p> <p>2 vehicle is coming around the yaw. But as far</p> <p>3 as using it critical speed, no.</p> <p>4 Q. Gotcha. Okay. I think we're on the same page.</p> <p>5 A. Good.</p> <p>6 Q. What decel rate did you use throughout the</p> <p>7 increments that we see on Exhibit 36?</p> <p>8 A. Well, it certainly varied, but it would be</p> <p>9 mainly .3 to .46 once you take into account the</p> <p>10 yaw and the yaw at various rates. But the</p> <p>11 maximum was right around .65. .65 .45 to .55</p> <p>12 for some of the roll-over event for the last --</p> <p>13 for the 40 feet, .4 to .5 Gs, those are the</p> <p>14 absolute numbers, not taking into account the</p> <p>15 yawing. And I -- Then I was -- .65 was the</p> <p>16 highest number that was used.</p> <p>17 Q. Okay. We're going to have to break that down,</p> <p>18 but I think I'm going to need longer than two</p> <p>19 minutes, so we'll go ahead and change the</p> <p>20 tapes.</p> <p>21 A. Okay.</p> <p>22 THE VIDEOGRAPHER: This is the end of</p> <p>23 disk No. 1, the deposition of Dennis Skogen,</p> <p>24 October 13th, 2016, 11:15 a.m. We're off the</p> <p>25 record.</p>

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<p>1 (A break was taken from 11:15 to</p> <p>2 11:28.)</p> <p>3 THE VIDEOGRAPHER: This is the</p> <p>4 beginning of disk No. 2 in the continuing</p> <p>5 deposition of Dennis Skogen, October 13th,</p> <p>6 2016, 11:28 a.m. You're on the record.</p> <p>7 MR. TAYLOR:</p> <p>8 Q. Mr. Skogen, are you ready to proceed?</p> <p>9 A. Yes, sir.</p> <p>10 Q. I want to follow up with you on some questions</p> <p>11 that I had about Exhibit 36 and see if I</p> <p>12 understood your earlier testimony. Okay?</p> <p>13 A. Yes.</p> <p>14 Q. My understanding is if we start with the most</p> <p>15 easterly vehicle on Exhibit 36, that that is</p> <p>16 the one that has been labeled A, is that right?</p> <p>17 A. Correct. In my calculations it's A, but that's</p> <p>18 the way I think of it as A.</p> <p>19 Q. Sure. And then each of the vehicles that we</p> <p>20 see in your diagram proceeding westerly would</p> <p>21 be the next in the alphabet, so the second one</p> <p>22 would be B, the third one would be C, and so</p> <p>23 forth?</p> <p>24 A. Exactly.</p> <p>25 Q. Point of trip vehicle would be H, right?</p>	<p>1 deceleration rate goes down from there. So if</p> <p>2 you're talking about the effective deceleration</p> <p>3 rate from A to B, as an example, it would be</p> <p>4 .43 to .48 Gs. And that would be the same from</p> <p>5 B to C. From C to D .4 to .45 Gs. From E to</p> <p>6 D, .35 to .4 Gs. From E to F, .28 to .33 Gs.</p> <p>7 Same deceleration for G to F. And then G to H,</p> <p>8 .38 to .43 Gs.</p> <p>9 Q. Does your decel -- Strike that. Do the</p> <p>10 deceleration rates that you used in your speed</p> <p>11 calculations take into account any braking by</p> <p>12 Mr. Below?</p> <p>13 A. Yes and no. In other words, the deceleration</p> <p>14 rates are based upon the tire marks being left.</p> <p>15 As the vehicle is yawing, the tires are</p> <p>16 scribing the marks. He may have had the brakes</p> <p>17 on and he may not have, but it's being slowed.</p> <p>18 The vehicle is being slowed anyway because the</p> <p>19 tires don't roll sideways.</p> <p>20 Q. In terms of trip mechanisms in the median, is</p> <p>21 it just the soil, or is there a different trip</p> <p>22 mechanism other than the soil, the gravel?</p> <p>23 A. Well, there are a number of factors that cause</p> <p>24 a vehicle to start to roll. If you're talking</p> <p>25 about the soil, I don't recall an object being</p>
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<p>1 A. I shouldn't say point. It's an area of trip.</p> <p>2 So yes, that would be H.</p> <p>3 Q. Okay. And then the final resting is position</p> <p>4 I, is that correct?</p> <p>5 A. It would be. We call it FRP, final rest</p> <p>6 position.</p> <p>7 Q. Fair enough. With regard to your speed</p> <p>8 calculations for the vehicle as it appears on</p> <p>9 your diagram at position A, you have calculated</p> <p>10 that at 58 to 63 miles per hour, is that</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And you told us how you did that. Did you tell</p> <p>14 us the deceleration rate that you used for that</p> <p>15 calculation?</p> <p>16 A. Well, it varies. But yes, I did.</p> <p>17 Q. Okay. What deceleration rate did you use at</p> <p>18 point A on this diagram?</p> <p>19 A. It's at .65 is the deceleration rate.</p> <p>20 Q. Okay. Is there a different deceleration rate</p> <p>21 used for the vehicle as we see it at point B?</p> <p>22 A. No. That would still be .65.</p> <p>23 Q. Okay.</p> <p>24 A. But again, these are adjusted because the</p> <p>25 vehicle is going into a yaw, so the effective</p>	<p>1 there that was that portion of the trip event.</p> <p>2 So it would be the soil and the tires</p> <p>3 and digging into the soil on the right side,</p> <p>4 yes.</p> <p>5 Q. Did you -- Excuse me. Did your colleague</p> <p>6 measure the depths of those marks in the</p> <p>7 median?</p> <p>8 A. Not that I recall.</p> <p>9 Q. Do you have an opinion as to whether or not the</p> <p>10 trailer began to roll first, or the truck?</p> <p>11 A. I would say the truck began to roll or tip</p> <p>12 first before the trailer.</p> <p>13 Q. Do you know how the ATVs were secured to the</p> <p>14 trailer?</p> <p>15 A. Not of my own personal knowledge. And I have</p> <p>16 the passenger.</p> <p>17 Q. What did he say about how the ATVs were secured</p> <p>18 to the trailer?</p> <p>19 A. He said that Mr. Below had strapped them down</p> <p>20 or tied them down before he had gotten into the</p> <p>21 pickup truck -- before the passenger got in the</p> <p>22 pickup truck</p> <p>23 Q. What was his speed at trip?</p> <p>24 A. In the area of the trip, I have 41 to 45 miles</p> <p>25 per hour.</p>

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<p style="text-align: right;">Page 114</p> <p>1 Q. Did you do an analysis of the roll rate?</p> <p>2 A. No, I didn't.</p> <p>3 Q. Did you make a determination as to where</p> <p>4 Mr. Below was ejected from the vehicle?</p> <p>5 A. Assuming he was ejected, no, I didn't.</p> <p>6 Q. Are you aware of whether or not he was</p> <p>7 ejected?</p> <p>8 A. Well, I understood there's some observations</p> <p>9 concerning that aspect, but I made no</p> <p>10 evaluation of whether he was or wasn't ejected,</p> <p>11 and if he was where he was ejected.</p> <p>12 Q. Was this scale diagram in part generated by a</p> <p>13 computer obviously?</p> <p>14 A. Yes.</p> <p>15 Q. Did the computer assist in any manner in</p> <p>16 determining the positions of the vehicle?</p> <p>17 A. Not really. We take the computer, we put the</p> <p>18 tire marks on, and that's from the photographs</p> <p>19 and our survey.</p> <p>20 As is the drawing -- base drawing,</p> <p>21 Exhibit 36, you see we used an aerial</p> <p>22 photograph. As it turns out, it was taken not</p> <p>23 long after the accident, so there were still</p> <p>24 some tire marks that show in the aerial</p> <p>25 photograph.</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. Have you ever served as an expert on an</p> <p>2 accident involving a passenger vehicle that had</p> <p>3 sustained a tread separation prior to today?</p> <p>4 A. Yes.</p> <p>5 Q. How many times?</p> <p>6 A. I've never kept track. Far as a</p> <p>7 reconstruction, probably 30 times, maybe as</p> <p>8 many as 40 times over the years.</p> <p>9 Q. Has it always been your opinion that a tread</p> <p>10 separation event has led to a loss of control</p> <p>11 in those accidents where a tire failure was</p> <p>12 involved?</p> <p>13 A. No.</p> <p>14 Q. So you would agree with me that the mere fact</p> <p>15 that a tire fails in service does not mean that</p> <p>16 a loss of vehicle control will necessarily</p> <p>17 follow?</p> <p>18 A. I agree with that, but that's not what I</p> <p>19 testified in those other cases. The one case</p> <p>20 was a tread separation after there was an</p> <p>21 accident. The tire was damaged because the</p> <p>22 fender was shoved into it and there was a tread</p> <p>23 separation. So that's to which I was</p> <p>24 referring. Not the question you just asked.</p> <p>25 Q. I've actually had a client sued for that</p>
<p style="text-align: right;">Page 115</p> <p>1 Then we place the vehicles on the</p> <p>2 diagram matching the tire marks, and the</p> <p>3 computer doesn't do it, we do it, but we use</p> <p>4 the computer AutoCAD to do so.</p> <p>5 And then I make calculations, and in</p> <p>6 this matter, Exhibit 34 would show the</p> <p>7 calculations we made. They were made with a</p> <p>8 spreadsheet.</p> <p>9 Q. Okay. Have you been given any information</p> <p>10 regarding the history of the vehicle prior to</p> <p>11 the accident?</p> <p>12 A. No.</p> <p>13 Q. Have you been given any information with regard</p> <p>14 to the history of the right rear tire prior to</p> <p>15 the accident?</p> <p>16 A. No.</p> <p>17 Q. Do you know anything about the air pressures</p> <p>18 that were in the tires on the date of the</p> <p>19 accident?</p> <p>20 A. You say anything. I don't know what the</p> <p>21 pressure settings were. I understand that they</p> <p>22 were inflated.</p> <p>23 Q. Right.</p> <p>24 A. Prior to the accident. Beyond that, I have no</p> <p>25 knowledge.</p>	<p style="text-align: right;">Page 117</p> <p>1 before. Can you believe that?</p> <p>2 In the other instances, have you</p> <p>3 testified that the tread separation event</p> <p>4 ultimately led to a loss of control?</p> <p>5 A. Where that was part of the reconstruction or</p> <p>6 asked that question, yes.</p> <p>7 Q. So you're of the belief that a tread separation</p> <p>8 event can lead to a loss of control?</p> <p>9 A. Yes.</p> <p>10 Q. But you're also of the belief that a tread</p> <p>11 separation event at highway speeds does not</p> <p>12 necessarily have to lead to a loss of</p> <p>13 control?</p> <p>14 A. I agree.</p> <p>15 Q. There are factors that contribute as to whether</p> <p>16 or not a tire failure at highway speeds will</p> <p>17 lead to a loss of control in an accident, is</p> <p>18 that true?</p> <p>19 A. Yes.</p> <p>20 Q. And identify for me then those factors that you</p> <p>21 believe contribute to whether a tire failure at</p> <p>22 highway speeds will lead to a loss of control.</p> <p>23 MR. ROGERS: Object to form. Go</p> <p>24 ahead.</p> <p>25 A. Well, the ones that can be identified I would</p>

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<p style="text-align: right;">Page 118</p> <p>1 say would be the type of vehicle, the size of</p> <p>2 the vehicle, the speed of the vehicle, the</p> <p>3 environmental conditions, the type of roadway,</p> <p>4 and if I didn't say it the speed of the</p> <p>5 vehicle, the surfaces encountered, the driver's</p> <p>6 skill.</p> <p>7 One of the most critical ones of</p> <p>8 course is driver expectation. Tire failure is</p> <p>9 not something that happens every day. It's for</p> <p>10 the most part a surprise event. Could be --</p> <p>11 Well, would be an emergency in my definition.</p> <p>12 So how that person reacts to emergency would</p> <p>13 vary from individual to individual, and from</p> <p>14 situation to situation.</p> <p>15 I probably haven't put all the</p> <p>16 variables in there, but at least those are a</p> <p>17 large number.</p> <p>18 MR. TAYLOR:</p> <p>19 Q. Some of the ones you told us were type of</p> <p>20 vehicle, size of vehicle?</p> <p>21 A. Yes.</p> <p>22 Q. Speed?</p> <p>23 A. Yes.</p> <p>24 Q. Roadway conditions or surfaces?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 120</p> <p>1 cited by Mr. Beauchamp in his report to support</p> <p>2 your opinions in this case?</p> <p>3 A. No.</p> <p>4 Q. Would you agree with me that the research</p> <p>5 indicates that a tire disablement such as a</p> <p>6 tread separation will cause drag and lateral</p> <p>7 movement to a vehicle?</p> <p>8 MR. ROGERS: Object to the form of the</p> <p>9 question.</p> <p>10 A. That it always will, or if it can? It can</p> <p>11 certainly, yes.</p> <p>12 MR. TAYLOR: What was the objection?</p> <p>13 I'm sorry. What's the nature of the objection?</p> <p>14 MR. ROGERS: It was incomplete, and it</p> <p>15 calls for speculation.</p> <p>16 MR. TAYLOR: Okay. Let me ask it</p> <p>17 again, let me try and clean it up.</p> <p>18 Q. You're aware, sir, that there's scientific</p> <p>19 literature that a tread separation event on the</p> <p>20 right rear of a vehicle will cause drag on that</p> <p>21 vehicle, correct?</p> <p>22 A. I expect there probably is something of that</p> <p>23 nature. I don't have an article in mind,</p> <p>24 however.</p> <p>25 Q. Are you aware of -- Strike that. Are you aware</p>
<p style="text-align: right;">Page 119</p> <p>1 Q. And the driver's skill and reaction?</p> <p>2 A. Correct.</p> <p>3 Q. Okay.</p> <p>4 A. That would be some. And then of course</p> <p>5 expectation, knowledge if there's going to be a</p> <p>6 failure. Those would all be driver factors and</p> <p>7 situation factors.</p> <p>8 Q. Have you done any testing that relates to the</p> <p>9 effect of a tire failure, whether it be a tread</p> <p>10 detachment or a blowout, on vehicle handling or</p> <p>11 controllability?</p> <p>12 A. Have I done a test?</p> <p>13 Q. Yeah.</p> <p>14 A. No.</p> <p>15 Q. Have you reviewed any testing with regard to</p> <p>16 this case as to the effects on vehicle handling</p> <p>17 or controllability when there's been a tire</p> <p>18 failure?</p> <p>19 A. I saw the documents that Mr. Beauchamp had and</p> <p>20 what he referenced. I have seen some of those</p> <p>21 documents over the years also.</p> <p>22 Q. Okay.</p> <p>23 A. But I didn't research any particular documents</p> <p>24 for this case.</p> <p>25 Q. Okay. Are you relying on any of the articles</p>	<p style="text-align: right;">Page 121</p> <p>1 of the scientific literature available related</p> <p>2 to the lateral movement a vehicle would expect</p> <p>3 to encounter during a tread separation event?</p> <p>4 A. I don't have that in mind, no.</p> <p>5 Q. Would you agree or disagree with the statement</p> <p>6 that the research indicates that vehicle</p> <p>7 control is typically not compromised to the</p> <p>8 point that a vehicle becomes uncontrollable</p> <p>9 simply due to a tread separation event?</p> <p>10 MR. ROGERS: Object to the form.</p> <p>11 THE WITNESS: I hate to do this, but</p> <p>12 could you read that back, please?</p> <p>13 (Question at Page 121, Line 5 read</p> <p>14 aloud by the reporter.)</p> <p>15 A. I have no opinion in that regard.</p> <p>16 MR. TAYLOR:</p> <p>17 Q. In your report, you -- the summary, you</p> <p>18 indicated that the tire failed suddenly. What</p> <p>19 do you mean by suddenly?</p> <p>20 A. That as the witness described, that the tire --</p> <p>21 sometimes people call it blew out, but failed,</p> <p>22 separated, failed to hold the vehicle up. The</p> <p>23 passenger eventually said that he felt his side</p> <p>24 of the pickup drop down. It wasn't my</p> <p>25 understanding this was a slow loss of tire</p>

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<p style="text-align: right;">Page 122</p> <p>1 pressure.</p> <p>2 Again, the witness said that he saw</p> <p>3 pieces or felt pieces of tire hitting their</p> <p>4 vehicle. So it's -- To me it's a sudden</p> <p>5 failure of the tire.</p> <p>6 Q. Do you have an opinion that you intend to</p> <p>7 express as to where in the accident sequence</p> <p>8 the tread and top belt began to detach from the</p> <p>9 subject tire?</p> <p>10 A. I don't have a distance to the east as we've</p> <p>11 been asking from location A.</p> <p>12 Q. Do you have an opinion that you intend to offer</p> <p>13 as to where the tire began to throw rubber</p> <p>14 pieces prior to the orientation of the vehicle</p> <p>15 that we see as Exhibit -- as A on Exhibit 36?</p> <p>16 A. Not without further information or assumptions</p> <p>17 being made by -- or being asked to be made by</p> <p>18 me.</p> <p>19 Q. As part of Exhibit 36, there's some photographs</p> <p>20 here, the scene photograph, P9. Here. I'll</p> <p>21 show you.</p> <p>22 A. Yes. And that's the same as the photograph on</p> <p>23 the top.</p> <p>24 Q. Sure. P9?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 124</p> <p>1 A. True.</p> <p>2 Q. Can we agree as a general proposition of</p> <p>3 physics that as the tread separation was</p> <p>4 occurring on Mr. Below's right rear tire, that</p> <p>5 there would have been some amount of drag</p> <p>6 impart -- imparted to his vehicle?</p> <p>7 A. Yes.</p> <p>8 Q. Can you quantify for the ladies and gentlemen</p> <p>9 of the jury what you believe to be the amount</p> <p>10 of that drag that would have been imparted to</p> <p>11 the vehicle?</p> <p>12 A. No.</p> <p>13 Q. After the right rear tire completed its tread</p> <p>14 and top belt detachment, would that drag on the</p> <p>15 right rear side of the vehicle have continued?</p> <p>16 A. Yes.</p> <p>17 Q. Why?</p> <p>18 A. Because the tire is not in its original</p> <p>19 condition. When its tread is separated, I</p> <p>20 would expect that the drag as we've been</p> <p>21 describing it would be the same or increase or</p> <p>22 decrease over the distance traveled.</p> <p>23 Of course there's going to be a time</p> <p>24 when the vehicle is rolling, and it doesn't</p> <p>25 matter anymore.</p>
<p style="text-align: right;">Page 123</p> <p>1 Q. And then there's also down below, separated</p> <p>2 part of the tire from the right rear of the</p> <p>3 Below GMC as located on the scene photographs?</p> <p>4 A. Yes.</p> <p>5 Q. Would it be your opinion that that's precisely</p> <p>6 where the tread and top belt piece that was</p> <p>7 located there detached from the tire?</p> <p>8 A. No.</p> <p>9 Q. Could have traveled further west along the</p> <p>10 roadway, right?</p> <p>11 A. Right. It detached further to the east,</p> <p>12 true.</p> <p>13 Q. Okay. Did anybody make any determination that</p> <p>14 the area in the median that is noted to be</p> <p>15 small pieces of tire and then the date, May</p> <p>16 14th, 2014, were tire pieces that related to</p> <p>17 the Below vehicle?</p> <p>18 A. I'm not certain of that. I understood they</p> <p>19 were related to the Below vehicle, but I'd have</p> <p>20 to go back and ask Mr. Peterson and do further</p> <p>21 study, as I replied to the question earlier.</p> <p>22 Q. Sure. As you sit here today, you can't testify</p> <p>23 that those small pieces of tire located in May</p> <p>24 of 2014 were actually related to the Below</p> <p>25 vehicle, correct?</p>	<p style="text-align: right;">Page 125</p> <p>1 Q. Sure. And let's talk about the tread</p> <p>2 separation event. As the tread is detaching</p> <p>3 from the tire, do you agree with me that</p> <p>4 there's increased drag on the vehicle from</p> <p>5 that right rear position?</p> <p>6 A. Yes.</p> <p>7 Q. Is it your opinion then based on the laws of</p> <p>8 physics that once that tread and top belt</p> <p>9 detaches, that that drag that was imparted</p> <p>10 because of the detaching tread and top belt</p> <p>11 remains the same, or does it dissipate?</p> <p>12 A. Well, I can't say that it remains exactly the</p> <p>13 same. I would expect it doesn't go away and</p> <p>14 vanish, but there would still be some drag. I</p> <p>15 can't tell you whether it's increasing or</p> <p>16 decreasing over the length of travel.</p> <p>17 Q. Okay. So how about in relation to the other</p> <p>18 three tires that still have their tread and top</p> <p>19 belt on them; would there be more or less drag</p> <p>20 on that right-hand side?</p> <p>21 A. More drag on the right rear side.</p> <p>22 Q. After the tread and top belt detach?</p> <p>23 A. Yes.</p> <p>24 Q. By what means?</p> <p>25 A. By the means of the tire doesn't have the same</p>

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<p style="text-align: right;">Page 126</p> <p>1 rolling circumference that it had. It doesn't</p> <p>2 have the same configuration. It's</p> <p>3 deteriorated. Whether it's deflated, we talked</p> <p>4 about that before, it's not rolling in the</p> <p>5 normal fashion as the other three, so in my</p> <p>6 opinion there would be increased drag at the</p> <p>7 right rear.</p> <p>8 Q. Fair enough. Let me ask you a better question</p> <p>9 then. If the tire does not immediately deflate</p> <p>10 after the tread and top belt detaches, is it</p> <p>11 still your opinion that there is increased drag</p> <p>12 on that right rear position as it relates to</p> <p>13 the other three tires?</p> <p>14 A. Most likely, but I can't say to a certainty</p> <p>15 without knowing how much it separated, over</p> <p>16 what length of the tire, and what -- whether</p> <p>17 the tire is still inflated or not.</p> <p>18 Q. No. I wanted you to assume with me the tire</p> <p>19 was still inflated.</p> <p>20 A. Oh, I'm sorry. I didn't understand.</p> <p>21 Q. And that the tread and top belt have completely</p> <p>22 detached.</p> <p>23 A. All the way around?</p> <p>24 Q. 360, just like we found it.</p> <p>25 A. Then I expect there's increased drag.</p>	<p style="text-align: right;">Page 128</p> <p>1 A. Yes. I would expect there would be some pull</p> <p>2 to the right.</p> <p>3 Q. So you would expect there to be some pull to</p> <p>4 the right as a result of the tread and top belt</p> <p>5 detaching, and then even after it detaches, in</p> <p>6 your opinion?</p> <p>7 A. Well, both.</p> <p>8 Q. I understand that that's your opinion, right?</p> <p>9 A. Yes.</p> <p>10 Q. Just restating it?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. So your opinion and analysis of this</p> <p>13 accident sequence is that Mr. Below would have</p> <p>14 experienced a right rear drag from the right</p> <p>15 rear tire failure all the way through the</p> <p>16 accident sequence?</p> <p>17 A. No. I can't say that. I can't say that he</p> <p>18 would have experienced it. The vehicle</p> <p>19 experiences.</p> <p>20 Q. Fair enough.</p> <p>21 A. The right rear experiences. He would know</p> <p>22 something is wrong, but certainly, as an</p> <p>23 example, the vehicle is rolling over, I doubt</p> <p>24 that he knows that the right rear wheel is</p> <p>25 dragging.</p>
<p style="text-align: right;">Page 127</p> <p>1 Q. There's still increased drag on that right rear</p> <p>2 position?</p> <p>3 A. In my opinion, yes.</p> <p>4 Q. And what's the basis of that opinion?</p> <p>5 A. Because as I described a minute ago, you start</p> <p>6 out with four tires inflated with all tire</p> <p>7 treads in place, and then the right rear is</p> <p>8 affected, suddenly affected, you asked me to</p> <p>9 assume it's still inflated, but that the tread</p> <p>10 is separated, and that in my opinion causes</p> <p>11 increased drag at the right rear.</p> <p>12 To quantify it, I haven't done so.</p> <p>13 Q. Sure. And certainly if the tire is deflated at</p> <p>14 that point, there's going to be increased drag</p> <p>15 on that right rear tire, correct?</p> <p>16 A. Correct.</p> <p>17 Q. For the ladies and gentlemen of the jury, if</p> <p>18 there's drag on the right rear of a GMC pickup</p> <p>19 truck like this one, what does that mean in</p> <p>20 terms of the direction of the vehicle?</p> <p>21 A. Well, the direction of the vehicle continues to</p> <p>22 go straight. It might have some pull to the</p> <p>23 right.</p> <p>24 Q. You would expect a little pull to the right,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 129</p> <p>1 Q. Sure. Let's talk about while the vehicle is</p> <p>2 still on the roadway. Would the vehicle, in</p> <p>3 your opinion, while the four tires are still</p> <p>4 on the roadway, have experienced a right rear</p> <p>5 drag?</p> <p>6 A. Yes.</p> <p>7 Q. And that right rear drag would have been</p> <p>8 essentially trying to redirect the vehicle to</p> <p>9 the right, is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. Ultimately the vehicle went off the roadway to</p> <p>12 the left, is that right?</p> <p>13 A. Yes.</p> <p>14 Q. Should have said is that correct. It's going</p> <p>15 to get confusing with the right, left.</p> <p>16 A. Okay. It's correct. Go to the left. That's</p> <p>17 what it did.</p> <p>18 Q. You bet.</p> <p>19 Do you have an opinion as to -- Strike</p> <p>20 that. In order for the vehicle to get off the</p> <p>21 roadway to the left, there had to have been a</p> <p>22 left steer input by Mr. Below, is that correct?</p> <p>23 A. I agree.</p> <p>24 Q. Do you have an opinion as to the magnitude of</p> <p>25 that steer input by Mr. Below?</p>

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<p style="text-align: right;">Page 130</p> <p>1 A. No.</p> <p>2 Q. Do you have an opinion as to the number of</p> <p>3 steer inputs that Mr. Below imparted to the</p> <p>4 vehicle prior to going off to the left?</p> <p>5 A. Only from what I understood testimony to be by</p> <p>6 the passenger and the witness, that the vehicle</p> <p>7 went to the right slightly, and then came back</p> <p>8 to the left. So that would indicate one</p> <p>9 steering input.</p> <p>10 But I can't say for sure. Mr. Below</p> <p>11 may have been fighting it all the way and</p> <p>12 trying to recover the vehicle.</p> <p>13 Q. Certainly the passenger indicates that there</p> <p>14 was a pull to the right and then a steer to the</p> <p>15 left, is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. And you don't dispute that, do you? That</p> <p>18 comports with the laws of physics, doesn't it?</p> <p>19 A. No, it doesn't. You could have a pull to the</p> <p>20 right and go straight. You could have a pull</p> <p>21 to the right and go off to the right. I'm</p> <p>22 just --</p> <p>23 Q. Sure.</p> <p>24 A. I don't disagree that that's what the witness</p> <p>25 says.</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. What would have caused it to go to the left</p> <p>2 without a steer input?</p> <p>3 A. Braking, as an example, and the right rear</p> <p>4 wheel is not going to brake as well, and you</p> <p>5 have both sides braking and tire surfaces on</p> <p>6 the left that are on the pavement. The right</p> <p>7 rear goes into the gravel and the grass.</p> <p>8 There could be a number of variables</p> <p>9 in that hypothetical. It wouldn't necessarily</p> <p>10 make it go to the right, or make it go</p> <p>11 straight, or go back to the left.</p> <p>12 Q. And in your opinion, Mr. Below did not brake to</p> <p>13 a severity that would have caused this vehicle</p> <p>14 to go to the left, did he?</p> <p>15 A. I don't have an opinion one way or the other on</p> <p>16 that. I don't have the opinion that it was a</p> <p>17 lock-up of the brakes as an example that caused</p> <p>18 it to go to the left.</p> <p>19 Q. It's your understanding of having investigated</p> <p>20 other accidents where there were tread</p> <p>21 separation events, that there would have been</p> <p>22 noise and vibration imparted to the vehicle,</p> <p>23 correct?</p> <p>24 A. At some time, yes.</p> <p>25 Q. Uh-huh. Define for me if you would what loss</p>
<p style="text-align: right;">Page 131</p> <p>1 Q. Sure.</p> <p>2 A. And that does happen where vehicles go to the</p> <p>3 right, they go back to the left. Sometimes</p> <p>4 vehicles go to the left, they come back to the</p> <p>5 right. That does happen in some accidents.</p> <p>6 Q. Sure. But in your analysis, with the drag</p> <p>7 continuing on that right rear position on this</p> <p>8 vehicle, both during and following the tread</p> <p>9 separation event, had there been no steer</p> <p>10 input, the vehicle simply would have gone off</p> <p>11 to the right-hand side of the road, correct?</p> <p>12 A. Yes. It did go off to the right-hand side of</p> <p>13 the road.</p> <p>14 Q. Right. And had there been no steer input to</p> <p>15 the left by Mr. Below, it would have continued</p> <p>16 to go to the right based on your analysis and</p> <p>17 understanding of the accident, correct?</p> <p>18 A. Probably. I can't say for certain though.</p> <p>19 Q. Well, more likely than not, correct?</p> <p>20 A. Well, because you go -- you start to get -- if</p> <p>21 you're going to the right, you get onto the</p> <p>22 shoulder and to the grass. I can't say that it</p> <p>23 would continue to go to the right throughout</p> <p>24 the event that you're hypothesizing where it</p> <p>25 went to the right originally.</p>	<p style="text-align: right;">Page 133</p> <p>1 of control means.</p> <p>2 A. Yes. It's a situation where the driver is</p> <p>3 unable to decide an effective choice of</p> <p>4 [pat path] that the vehicle is taking.</p> <p>5 Q. So the driver is no longer able to decide --</p> <p>6 A. And affect the change of course, or perhaps</p> <p>7 it's braking for that matter also.</p> <p>8 Q. Decide and affect a change?</p> <p>9 A. Yes. A desired change in direction of path or</p> <p>10 speed.</p> <p>11 Q. So a driver is no longer able to decide and</p> <p>12 affect a desired direction change in path of a</p> <p>13 vehicle?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. Where on Exhibit 36 is Mr. Below no</p> <p>16 longer able to decide and affect a desired</p> <p>17 direction and change of path of his vehicle?</p> <p>18 A. Certainly at position A, and probably before</p> <p>19 that, but I don't have any other information to</p> <p>20 place him on the drawing other than at the</p> <p>21 start of the tire marks.</p> <p>22 Q. So certainly at position A, he has then lost</p> <p>23 control and he's not going to regain it?</p> <p>24 A. Correct.</p> <p>25 Q. The reason the vehicle got into position A is a</p>

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<p style="text-align: right;">Page 134</p> <p>1 result of at least one left steer input by</p> <p>2 Mr. Below, correct?</p> <p>3 A. Well, it's his response to the tire failure.</p> <p>4 I'd say it's the tire failure, and now we've</p> <p>5 talked about him trying to control the vehicle</p> <p>6 from the tire failure.</p> <p>7 But yes, I would say there's some</p> <p>8 steering input to the left.</p> <p>9 MR. TAYLOR: I need to object to</p> <p>10 everything except yes as nonresponsive.</p> <p>11 Q. The vehicle at position A on Exhibit 36 would</p> <p>12 not have been in that position but for a left</p> <p>13 steer input, correct?</p> <p>14 MR. ROGERS: Object to the form.</p> <p>15 A. I can't say that's a fact, no.</p> <p>16 MR. TAYLOR:</p> <p>17 Q. Would -- But for a left steer input and/or</p> <p>18 braking in your opinion, right?</p> <p>19 MR. ROGERS: Object to the form of the</p> <p>20 question.</p> <p>21 A. If you're taking that snippet at A?</p> <p>22 MR. TAYLOR:</p> <p>23 Q. Yes.</p> <p>24 A. I would say that indicates some turning to the</p> <p>25 left and perhaps some braking.</p>	<p style="text-align: right;">Page 136</p> <p>1 sequence the right rear tire lost its air</p> <p>2 pressure?</p> <p>3 A. Like I said, I didn't know exactly when it lost</p> <p>4 its air pressure. So no. The answer again is</p> <p>5 no.</p> <p>6 Q. You're not going to offer the opinion that the</p> <p>7 subject vehicle was defectively designed,</p> <p>8 correct?</p> <p>9 A. You're correct. I am not going to.</p> <p>10 Q. Do you believe that the subject vehicle as it</p> <p>11 was loaded on the date of this accident was</p> <p>12 unstable?</p> <p>13 A. No. I don't believe it was unstable.</p> <p>14 Q. What's the basis of that opinion?</p> <p>15 A. Well, it had been driven. Seemed to me that it</p> <p>16 would be stable in the sense that it's a pickup</p> <p>17 truck pulling a trailer. I understand there's</p> <p>18 load on it, but I don't know exactly what the</p> <p>19 load is. But there was no report by the</p> <p>20 passenger of any instability.</p> <p>21 There was no report by the witness</p> <p>22 behind that somehow the trailer was swinging</p> <p>23 back and forth before this event occurred.</p> <p>24 Q. And that's a good point. How would instability</p> <p>25 have manifested itself based on the loading of</p>
<p style="text-align: right;">Page 135</p> <p>1 Q. Both driver reactions, correct?</p> <p>2 A. Yes.</p> <p>3 Q. Did you measure the side force capability of</p> <p>4 the right rear tire in either inflated or</p> <p>5 uninflated condition?</p> <p>6 A. No.</p> <p>7 Q. And you're not going to offer any opinions as</p> <p>8 to the severity or the magnitude of any pull to</p> <p>9 the right on this vehicle as a result of the</p> <p>10 tread separation event, correct?</p> <p>11 A. As to numbers, no, I'm not.</p> <p>12 Q. Are you going to quantify it in any other</p> <p>13 manner?</p> <p>14 A. We've already talked about it's my opinion</p> <p>15 there's some drag.</p> <p>16 Q. Right.</p> <p>17 A. But I haven't given any numbers. I don't know</p> <p>18 any numbers.</p> <p>19 Q. Okay. I may have asked you this. I apologize</p> <p>20 if I have. And I'm not trying to see if you</p> <p>21 answer the same way like that other lawyer did</p> <p>22 you were telling me about.</p> <p>23 A. Right.</p> <p>24 Q. Let me ask a clean question. Do you have an</p> <p>25 opinion, sir, as to where in the accident</p>	<p style="text-align: right;">Page 137</p> <p>1 this vehicle?</p> <p>2 A. Well, if we had -- You're asking a</p> <p>3 hypothetical. If you had, let's say, too much</p> <p>4 weight on the trailer -- rear of the trailer</p> <p>5 and not enough tongue weight, and you could</p> <p>6 have then a situation where the trailer would</p> <p>7 move side to side, that would be -- manifest in</p> <p>8 observations made by others of the way that it</p> <p>9 was being pulled. The driver would sense that</p> <p>10 as far as a trailer contributing to</p> <p>11 instability.</p> <p>12 If you're talking about the pickup</p> <p>13 itself, certainly going around corners, if the</p> <p>14 truck was unstable, there would be excessive</p> <p>15 leaning, potential tipping over at that</p> <p>16 location.</p> <p>17 I didn't see any sign from any facts</p> <p>18 I've seen in this case that the pickup by</p> <p>19 itself or with the attached trailer was</p> <p>20 unstable.</p> <p>21 Q. Did you do any analysis of the handling or</p> <p>22 steering properties of the GMC pickup involved</p> <p>23 in this accident with four good tires?</p> <p>24 A. No.</p> <p>25 Q. Can you quantify for us the understeer gradient</p>

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<p style="text-align: right;">Page 138</p> <p>1 of the subject vehicle with four good tires on</p> <p>2 it?</p> <p>3 A. No.</p> <p>4 Q. Are you aware of whether or not the subject</p> <p>5 vehicle would transition to an oversteer</p> <p>6 vehicle with a right rear tire failure?</p> <p>7 A. Do I know?</p> <p>8 Q. Yes, sir.</p> <p>9 A. No. I don't know.</p> <p>10 Q. Have you ever been in a vehicle as a driver or</p> <p>11 passenger that suffered a tread and top belt</p> <p>12 detachment?</p> <p>13 THE COURT REPORTER: Tread?</p> <p>14 MR. TAYLOR:</p> <p>15 Q. Detachment? Tread and top belt detachment?</p> <p>16 A. No.</p> <p>17 Q. Have you ever been present for any testing</p> <p>18 where tread and top belts have been purposely</p> <p>19 detached from passenger vehicles?</p> <p>20 A. No.</p> <p>21 Q. Have you performed any computer simulations of</p> <p>22 this accident?</p> <p>23 A. No.</p> <p>24 Q. Have you done any animations of this accident?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 140</p> <p>1 Easton early on, we had some Corvair cases, and</p> <p>2 I worked with Professor Easton and there's</p> <p>3 some allegations about the Corvair being</p> <p>4 defective.</p> <p>5 Q. Fair enough. Other than the Corvair?</p> <p>6 A. Talking passenger cars, I'd say probably not.</p> <p>7 I don't recall one.</p> <p>8 Q. How about Ford or Volvo; did you defend them</p> <p>9 against allegations of design or manufacturing</p> <p>10 defect?</p> <p>11 A. In the Ford cases, those were reconstructions,</p> <p>12 and the Volvo I believe was too.</p> <p>13 Q. Have you been asked to testify at trial?</p> <p>14 A. No.</p> <p>15 Q. Does most of your work occur in the state of</p> <p>16 Wisconsin?</p> <p>17 A. Right now probably, yes.</p> <p>18 Q. How long has that been the case?</p> <p>19 A. Probably the last -- Well, it started out</p> <p>20 originally back in -- 46 years ago it was</p> <p>21 mostly Wisconsin.</p> <p>22 Q. Sure.</p> <p>23 A. But then I've been in just about every state,</p> <p>24 three countries.</p> <p>25 But right now I would say mostly the</p>
<p style="text-align: right;">Page 139</p> <p>1 Q. Do you intend to?</p> <p>2 A. No.</p> <p>3 Q. Have you ever worked for a company or</p> <p>4 government agency that has responsibility for</p> <p>5 overseeing any aspect of safety related to</p> <p>6 passenger vehicles or their component parts?</p> <p>7 A. No.</p> <p>8 Q. Ever worked for an automobile manufacturer?</p> <p>9 A. Not as a direct employee, no.</p> <p>10 Q. Have you testified as an expert on behalf of</p> <p>11 vehicle manufacturers in the past?</p> <p>12 A. I have.</p> <p>13 Q. Which ones?</p> <p>14 A. General Motors, it was Jeep AMC at that time.</p> <p>15 I've had some work with Ford. There probably</p> <p>16 was a Volvo in my past.</p> <p>17 Those would be the names that come to</p> <p>18 mind.</p> <p>19 Q. Which particular Ford product were you</p> <p>20 defending?</p> <p>21 A. I wasn't defending the product. Was</p> <p>22 reconstructing the accident.</p> <p>23 Q. Did you ever defend a GM product from</p> <p>24 allegations of defect?</p> <p>25 A. As I told you before, I worked with Professor</p>	<p style="text-align: right;">Page 141</p> <p>1 Midwest and Wisconsin.</p> <p>2 Q. In those other cases where you had done</p> <p>3 reconstructions of accidents involving tire</p> <p>4 failures, were all of those steel-belted radial</p> <p>5 tires, or were some of those also bias-ply</p> <p>6 tires?</p> <p>7 A. Excuse me. I have not testified in all those</p> <p>8 places or analyzed in all those places failures</p> <p>9 of tires. I thought you were talking about</p> <p>10 accident reconstruction analysis work.</p> <p>11 Q. I was.</p> <p>12 A. I don't recall any -- Maybe there was one in</p> <p>13 Iowa back when the Firestone steel-belted tires</p> <p>14 were failing where I did some reconstruction</p> <p>15 work, but I don't recall any in some other</p> <p>16 state other than Wisconsin.</p> <p>17 Q. And let's break it down a little bit. I think</p> <p>18 what you told me earlier was that you had</p> <p>19 investigated some 20 or 30 other accidents in</p> <p>20 your history that involved some type of tire</p> <p>21 failure event?</p> <p>22 A. Correct.</p> <p>23 Q. And what I want to know now is, of those 20 or</p> <p>24 30 investigations that you conducted related to</p> <p>25 tire failures, if they were all steel-belted</p>

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<p style="text-align: right;">Page 142</p> <p>1 radial tires, all bias-ply tires, or some 2 combination of those two?</p> <p>3 A. I simply don't remember. I know I did some 4 reconstruction work on when the Firestone 5 steel-belted tires were separating, but I -- 6 I'd say -- Well, early on we still had some 7 bias-ply tires. But most of my work is 8 concentrated on whether there was a nail in the 9 tire or something of that nature, rather than 10 ply separations.</p> <p>11 So whether they were steel-belted or 12 not I simply don't remember, other than the 13 Firestone tires. I remember some of those.</p> <p>14 Q. Right. Did the Firestone tires fail by tread 15 and top belt detachment?</p> <p>16 A. By what?</p> <p>17 Q. Tread and top belt detachment?</p> <p>18 A. Not that I recall. But that was -- I didn't 19 analyze the reason for the failures. I was 20 involved in the reconstructions of the 21 accidents.</p> <p>22 Q. I understand. And in part of your analysis of 23 the reconstruction, would you look at how the 24 tire may have failed, by what means?</p> <p>25 A. Generally, yes.</p>	<p style="text-align: right;">Page 144</p> <p>1 there were 20 and 30 other cases that you had 2 investigated where a tire had failed by tread 3 and top belt detachment?</p> <p>4 A. No. And perhaps it was 30 to 40. 5 MR. ROGERS: Correct. 6 MR. TAYLOR:</p> <p>7 Q. Sorry.</p> <p>8 A. These were totally -- You asked about tire 9 failures, and I don't remember too awful many 10 other than the Firestone where it was ply and 11 tread separation.</p> <p>12 Q. Okay.</p> <p>13 A. But I don't have a number in mind.</p> <p>14 Q. Other than the Firestone tires back in the 15 early 2000s that may have failed by tread and 16 top belt detachment and you investigated an 17 accident following that, do you recall any 18 other manufacturers -- tire manufacturers that 19 would have been involved in any of the other 20 accidents you investigated?</p> <p>21 A. No.</p> <p>22 Q. Do you have any criticisms of Mr. Beauchamp's 23 analysis in this case?</p> <p>24 A. To the parts I evaluated that pertain to what 25 I've done and to the degree that I could</p>
<p style="text-align: right;">Page 143</p> <p>1 Q. Or mode?</p> <p>2 A. But that was not my area. Usually the tires 3 were then sent to other people to analyze.</p> <p>4 Q. Fair enough. Just like in this case, somebody 5 else is going to tell the ladies and gentlemen 6 of the jury on behalf on the Plaintiffs why 7 they believe the tire came apart the way it 8 did, correct?</p> <p>9 A. I expect so.</p> <p>10 Q. Not you?</p> <p>11 A. Not me.</p> <p>12 Q. That is not your job?</p> <p>13 A. That's right.</p> <p>14 Q. Okay. My point is, I want to talk to you about 15 accident reconstructions where you've been the 16 accident reconstructionist and part of the 17 analysis was that there was a tire event 18 involved. Okay?</p> <p>19 A. Yes.</p> <p>20 Q. Of those, can you tell us how many have 21 involved a tread and top belt detachment as we 22 see in the tire in this case?</p> <p>23 A. No.</p> <p>24 Q. When you gave me the number of 20 or 30 earlier 25 in your deposition, did you mean to imply that</p>	<p style="text-align: right;">Page 145</p> <p>1 ascertain what he did, no. His speed 2 calculation was 55 to 63 miles per hour. I 3 don't know the methodology he applied, but the 4 results are similar to mine.</p> <p>5 The whole other topics that he 6 discussed I didn't -- I don't recall one way or 7 the other to comment accordingly. But on the 8 reconstruction aspects, his drawing looks like 9 my drawing. His speed calculations are very 10 similar to mine. Or I should say the results. 11 I don't know what he did in detail to arrive at 12 the same top number that I did.</p> <p>13 Q. But purely talking about how the vehicle moved 14 through these tire marks, the number of rolls 15 and the speed calculations, that analysis from 16 Mr. Beauchamp is very similar to your analysis?</p> <p>17 A. Yes.</p> <p>18 Q. How and why the vehicle became oriented in that 19 particular position is where you guys would 20 differ, is that correct?</p> <p>21 A. I haven't studied enough in detail. He has a 22 number of opinions related to the tire failure 23 and what the vehicle does, and I haven't 24 analyzed that to that degree other than what 25 we've -- other than what I've responded to in</p>

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<p style="text-align: right;">Page 146</p> <p>1 your questions today.</p> <p>2 Q. Sure.</p> <p>3 A. So I can't comment on his report further.</p> <p>4 Q. Okay. And that's what I'm getting to, is I</p> <p>5 need to understand at the time of trial, are</p> <p>6 you going to come in and offer any additional</p> <p>7 opinions as to any effect the failure of the</p> <p>8 right rear tire may have had on the handling</p> <p>9 and controllability of Mr. Below's pickup</p> <p>10 truck, other than what we talked about so</p> <p>11 far?</p> <p>12 A. No.</p> <p>13 Q. Have you consulted with any of the other</p> <p>14 experts that have been retained by Mr. Below's</p> <p>15 attorneys as to their opinions on the effect</p> <p>16 the right rear tire failure may have had on the</p> <p>17 handling and stability of the Below pickup</p> <p>18 truck?</p> <p>19 A. No.</p> <p>20 Q. You would agree that a tread separation on a</p> <p>21 right rear tire on a 2005 GMC pickup truck such</p> <p>22 as this could be a controllable event?</p> <p>23 A. It's a possibility, yes, I agree.</p> <p>24 Q. Did I ask you if you were going to offer any</p> <p>25 opinions on warnings?</p>	<p style="text-align: right;">Page 148</p> <p>1 Q. Do you know anything about Mr. Below's cell</p> <p>2 phone use just prior to the accident?</p> <p>3 A. No.</p> <p>4 Q. With regard to the speeds of the vehicle as it</p> <p>5 was traveling down I-94 westbound, can you tell</p> <p>6 the ladies and gentlemen of the jury any speed</p> <p>7 that Mr. Below may have been traveling prior to</p> <p>8 the first tire mark?</p> <p>9 A. Depends whether or not I consider with the</p> <p>10 witness that was following said.</p> <p>11 Q. Uh-huh.</p> <p>12 A. If we're just talking about the physical facts,</p> <p>13 the answer is no, not without further</p> <p>14 assumptions.</p> <p>15 If we go by what the witnesses would</p> <p>16 indicate, yes, I could.</p> <p>17 Q. The physical facts are what you told us you</p> <p>18 believe his speeds were at the time of the</p> <p>19 first tire mark, correct?</p> <p>20 A. Correct.</p> <p>21 Q. Other than that, you've got a witness that was</p> <p>22 traveling behind him who estimated his speed,</p> <p>23 is that right?</p> <p>24 A. Yes.</p> <p>25 Q. And do you know the qualifications of that</p>
<p style="text-align: right;">Page 147</p> <p>1 A. You did, and I'm not.</p> <p>2 Q. And you said no. Okay. Good.</p> <p>3 A. Cross off another page, please.</p> <p>4 Q. How about we take a break? Mind if we go off</p> <p>5 the record?</p> <p>6 A. No. I don't mind at all.</p> <p>7 MR. TAYLOR: Great.</p> <p>8 THE VIDEOGRAPHER: Going off the</p> <p>9 record at 12:13 p.m.</p> <p>10 (A break was taken from 12:13 to</p> <p>11 12:33.)</p> <p>12 THE VIDEOGRAPHER: We are back on the</p> <p>13 record at 12:33.</p> <p>14 MR. TAYLOR:</p> <p>15 Q. Mr. Skogen, are you ready to continue?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Great.</p> <p>18 Do you know anything about whether the</p> <p>19 radio was on in the vehicle just prior to the</p> <p>20 accident?</p> <p>21 A. No, sir.</p> <p>22 Q. Do you know anything about where Mr. Below's</p> <p>23 hands were on the steering wheel just prior to</p> <p>24 the accident?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 149</p> <p>1 individual to estimate speeds?</p> <p>2 A. I don't know if it's qualifications. I</p> <p>3 remember the statement that the witness who was</p> <p>4 in the left lane was in the process of passing</p> <p>5 Mr. Below's truck. So I don't know about</p> <p>6 qualifications to make an observation that</p> <p>7 the witness who was passing was going faster</p> <p>8 than Mr. Below. Beyond that I have no</p> <p>9 response.</p> <p>10 Q. In terms of how fast Mr. Below had traveled</p> <p>11 while going down Interstate 94 prior to that</p> <p>12 witness coming behind him, do you have any</p> <p>13 information about that?</p> <p>14 A. No.</p> <p>15 Q. Do you have any information with regard to the</p> <p>16 care and maintenance of the subject vehicle?</p> <p>17 A. No.</p> <p>18 Q. Do you have any information with regard to the</p> <p>19 care and maintenance of the subject tire?</p> <p>20 A. No.</p> <p>21 Q. Are you going to drive on the interstate today,</p> <p>22 sir?</p> <p>23 A. No.</p> <p>24 Q. Do you sometimes drive on Interstate 94?</p> <p>25 A. Yes. I'll be driving on it tomorrow.</p>

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<p style="text-align: right;">Page 150</p> <p>1 Q. When you're driving on Interstate 94, will you</p> <p>2 be wearing your seat belt?</p> <p>3 A. Yes.</p> <p>4 Q. Do you consider your seat belt use to be a</p> <p>5 prudent thing to do?</p> <p>6 A. Prudent might be a legal term, and I'll defer</p> <p>7 to others on that. But I consider it a safe</p> <p>8 thing to do.</p> <p>9 Q. Do you consider wearing a seat belt a safe</p> <p>10 thing to do?</p> <p>11 A. Yes, I do.</p> <p>12 Q. Do you make people riding in your vehicle wear</p> <p>13 their seat belts?</p> <p>14 A. Well, to the degree that I can make them. My</p> <p>15 children certainly have to wear their seat</p> <p>16 belts, and I highly recommend and suggest</p> <p>17 strongly that who's ever a passenger in my</p> <p>18 vehicle wears their seat belt. But I'm not</p> <p>19 sure I can make them wear their seat belt.</p> <p>20 Q. I won't pull away from a curb unless</p> <p>21 everybody's belted. Will you?</p> <p>22 A. I have done so, yes.</p> <p>23 Q. Is that a safe thing to do?</p> <p>24 MR. ROGERS: Object to the form.</p> <p>25 A. Pull away from the curb without people all</p>	<p style="text-align: right;">Page 152</p> <p>1 have not asked you about today?</p> <p>2 A. No.</p> <p>3 Q. Have you told me the basis of all of the</p> <p>4 opinions that you do intend to offer at the</p> <p>5 time of trial?</p> <p>6 A. Yes.</p> <p>7 MR. TAYLOR: With that I will reserve</p> <p>8 the remainder of my questions till the time of</p> <p>9 trial, and I will pass the witness.</p> <p>10 E-X-A-M-I-N-A-T-I-O-N</p> <p>11 BY MR. ROGERS:</p> <p>12 Q. I just have a clarification question, sir.</p> <p>13 During your investigation and work on this</p> <p>14 case, did you make a determination as to when</p> <p>15 the accident sequence began in this crash?</p> <p>16 A. Yes.</p> <p>17 Q. And what is that?</p> <p>18 A. When the tire failed, the right rear tire</p> <p>19 failed.</p> <p>20 MR. ROGERS: That's all I have. Thank</p> <p>21 you.</p> <p>22 E-X-A-M-I-N-A-T-I-O-N</p> <p>23 BY MR. TAYLOR:</p> <p>24 Q. And you can't tell us where the right rear</p> <p>25 tire -- Strike that. You can't tell us</p>
<p style="text-align: right;">Page 151</p> <p>1 wearing their seat belts?</p> <p>2 MR. TAYLOR:</p> <p>3 Q. Yes, sir.</p> <p>4 A. I certainly consider it a safe thing to do.</p> <p>5 Q. We already talked about that you can't tell us</p> <p>6 the distance from position A on Exhibit 36</p> <p>7 where the subject tire began to fail, is that</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. Do you have any opinion as to how long in time</p> <p>11 it was prior to the vehicle being at position A</p> <p>12 that the subject right tire began to fail?</p> <p>13 A. Not without further information, I do not.</p> <p>14 Q. As the vehicle appears in position A on</p> <p>15 Exhibit 36, do you believe the right rear tire</p> <p>16 at that point had lost all of its tread and top</p> <p>17 belt?</p> <p>18 A. No. I don't have an opinion one way or the</p> <p>19 other in that regard.</p> <p>20 Q. Do you have an opinion one way or the other</p> <p>21 where in the accident sequence the right rear</p> <p>22 tire lost all of its tread and top belt?</p> <p>23 A. No.</p> <p>24 Q. Are you aware of any other opinions that you</p> <p>25 intend to offer at the time of trial that I</p>	<p style="text-align: right;">Page 153</p> <p>1 where in space or in time the right rear tire</p> <p>2 began to fail, is that correct?</p> <p>3 A. Well, not the exact location. Of course not.</p> <p>4 But I can tell you it was further to the east,</p> <p>5 and it's sometime before location A. I don't</p> <p>6 have enough information without making some</p> <p>7 assumptions or having further input as to the</p> <p>8 area both in time or distance before</p> <p>9 position A.</p> <p>10 Q. And can you tell us any conditions that may</p> <p>11 have been manifesting on the tire itself prior</p> <p>12 to its ultimate failure?</p> <p>13 A. No.</p> <p>14 Q. You certainly don't know what caused the</p> <p>15 subject tire to fail, right?</p> <p>16 A. Well, that wasn't my area of analysis. So the</p> <p>17 answer is no, I don't.</p> <p>18 Q. All right.</p> <p>19 A. Not without information from someone else or</p> <p>20 assumptions being made.</p> <p>21 Q. Sure. And based on the laws of physics as you</p> <p>22 understand them with the right rear tire</p> <p>23 failure on the Below vehicle, it would have</p> <p>24 been pulled to the right, is that correct?</p> <p>25 A. I don't know about it being the laws of physics</p>

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1

per se, but it's been my experience that that's

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what initially would occur with the right rear,

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there would be a tendency for the vehicle to go

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to the right initially.

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Q. Sure. And that the only way it would get back

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to the left would be with a steer input and/or

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a braking of the vehicle, correct?

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MR. ROGERS: Object to the form. It's

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incomplete.

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A. There could be some other ways, but those would

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be the most common ways.

12

MR. TAYLOR:

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Q. What other ways is it going to get back to the

14

left?

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A. We talked about that before. If you go off on

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the shoulder, the coefficient on the right side

17

is lower than on the left side, so there would

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be some pulling back to the left. We can talk

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about drop-off of the edge of the roadway.

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There are a number of ways it could go

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back to the left.

22

Q. Sure.

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A. Steering is the most common way.

24

Q. Fair enough. In this accident sequence, is

25

there any indication that the vehicle went off

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1

the roadway to the right?

2

A. No.

3

Q. Is there any indication other than a steer

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and/or braking by Mr. Below that put the

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vehicle in the leftward position that we find

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it at point A on Exhibit 36?

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MR. ROGERS: Object to the form.

8

A. Not of which I'm aware, no.

9

MR. TAYLOR: Okay. That's all I have.

10

We're off the record.

11

THE VIDEOGRAPHER: This concludes the

12

deposition of Dennis Skogen on October 13th,

13

2016. Off the video record at 12:41 p.m.

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(Proceedings ended at 12:41 p.m.)

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STATE OF WISCONSIN)

2

) SS:

3

MILWAUKEE COUNTY)

4

I, DOREEN M. BROWN-SCHWAGER, a Notary

5

Public in and for the State of Wisconsin, do hereby

6

certify that the above deposition of DENNIS SKOGEN,

7

was taken before me, on October 13, 2016, at the

8

offices of Habush, Habush & Rottier, 150 East Gilman

9

Street, Madison, Wisconsin, commencing at 9:05 a.m.

10

That it was taken in machine

11

shorthand by myself, and that the foregoing

12

proceedings constitute a full, true, and correct

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transcription of my original machine shorthand notes

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taken at said hearing.

15

That said deponent, before

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examination, was duly sworn to testify the truth,

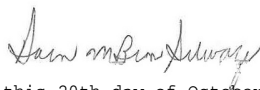
17

the whole truth, and nothing but the truth relative

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to said cause.

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Dated this 20th day of October, 2016.

21

22

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24

25

My commission expires November 2, 2018.

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ERRATA SHEET

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5

I declare under penalty of perjury that I have read the

6

foregoing _____ pages of my testimony, taken

7

on _____ (date) at

8

_____ (city), _____ (state),

9

10

and that the same is a true record of the testimony given

11

by me at the time and place herein

12

above set forth, with the following exceptions:

13

14

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Line

Should read:

Reason for Change:

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ERRATA SHEET				Page 158
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